TITLE III.

TAXATION AND FINANCIAL ADMINISTRATION

CHAPTER

(The purpose of this Title is twofold; first, it shall encompass the specific tax assessments that have been levied by ordinances and second, it shall cover all other non-tax ordinances that deal with the subject of County financial administration.)

CHAPTER 5

TAX ASSESSMENTS

(This Chapter shall cover in depth only those tax assessments that have been established by County ordinance and shall specifically exclude those tax assessments that have been created by State and Federal statutes or by County resolution. The Chapter will, however, also include a brief listing of other noteworthy county tax assessments that have been enacted by means other than ordinance.)

ARTICLE 1. FUEL TAX

Sec. 5-1.1 Fuel Tax Rate.

The County of Kauai fuel tax authorized by Chapter 243 Haw. Rev. Stat., as amended, is thirteen cents (13¢) per gallon of liquid fuel and zero cents (0¢) per gallon of biodiesel, as fixed by Resolution No. 2004-06, Draft 2, pursuant to Sec. 243-5, Haw. Rev. Stat., as amended. A review by the Administration of the impact the biodiesel fuel tax rate established herein has on the highway fund shall be completed by July 1, 2009. (Res. No. 81, June 13, 1957;

Sec. 5-2.1, R.C.O. 1976; Ord. No. 540, April 19, 1988; Res. No. 22-99, May 26, 1999; Ord. No. 738, May 27, 1999; Ord. No. B-552-99, May 27, 1999; Ord. No. 761, May 2, 2001; Ord. No. 816, May 4, 2004)

ARTICLE 2. MOTOR VEHICLE WEIGHT TAX

Sec. 5-2.1 Purpose.

An ordinance establishing the rate and minimum tax at which all vehicles and motor vehicles in the County shall be taxed. (Sec. 30, C.O. 1971; Ord. No. 191, September 4, 1973; Ord. No. 230, October 24, 1974; Sec. 5-3.1, R.C.O. 1976; Ord. No. 306, June 1, 1977; Sec. 5-3.1, 1978 Cumulative Supplement)

Sec. 5-2.2 Definitions.

(1) The terms "vehicle", "motor vehicle", "truck", "net weight" and all other terms pertinent to the vehicular weight tax contained in this Article shall be defined as set forth in Chapter 249, H.R.S. All applicable provisions relative to the County Vehicular Weight Tax, other than the rates contained in this Article, shall be governed by the provisions of Chapter 249, H.R.S.

(2) "Dealer" is defined in Section 437-1.1, H.R.S. (Ord. No. 128, December 23, 1966; Sec. 30, C.O. 1971; Ord. No. 191, September 4, 1973; Ord. No. 230, October 24, 1974; Sec. 5-3.2, R.C.O. 1976; Ord No. 306, June 1, 1977; Sec. 5-3.2, 1978 Cumulative Supplement; Ord. No. 354, December 29, 1978; Ord. No. 425, May 1, 1982)

Sec. 5-2.3 Imposition of Tax.

All vehicles and motor vehicles located in the County of Kauai at the time of registration shall be subject to an annual tax, except as to the minimum tax, computed according to the net weight of each vehicle as herein provided to be paid by the owner thereof, which tax shall become due and payable on January 1 and must be paid before April 1 in each year commencing as of January 1, 1979:

(a) Motor vehicles designed solely for carrying passengers (which classification shall include automobiles, buses, ambulances and hearses), one and one-quarter cents (1¼¢) per pound of such net weight.

(b) The rate of minimum tax for a truck or non-commercial motor vehicle shall be the same as provided for a passenger vehicle if:

(1) The truck or non-commercial motor vehicle has a net weight of six thousand five hundred pounds or less; and

(2) The owner submits proof to the Director of Finance that the truck or non-commercial motor vehicle is not being operated for compensation or commercial purposes.

(c) Motor vehicles and other vehicles designed for carrying property or for purposes other than the carriage of passengers (including trucks other than those described in paragraph (b), truck tractors, road tractors, trailers, and semi-trailers), two and one-half cents (2½¢) per pound of such net weight.

(d) Notwithstanding the rates set forth in paragraphs (a) and (c) above, there shall be assessed and collected for any motor vehicle or other vehicle a minimum tax of twelve and no/100 dollars ($12.00). (Ord. No. 128, December 23, 1966; Sec. 30, C.O. 1971; Ord. No. 191, September 4, 1973; Ord. No. 230, October 24, 1974; Sec. 5-3.3, R.C.O. 1976; Ord. No. 306, June 1, 1977; Sec. 5-3.3, 1978 Cumulative Supplement; Ord. No. 354, December 29, 1978; Ord. No. 737, May 27, 1999; Ord. No. B-552-99, May 27, 1999; Ord. No. B-2000-573, May 30, 2000; Ord. No. 762, May 2, 2001)

Sec. 5-2.4 Motor Vehicle Certificate Of Ownership And Registration Fees.

The Director of Finance shall charge and collect fees for the issuance of motor vehicle certificate of ownership and registration as follows:

(1) Corrections on the certificate of registration and certificate of ownership, Section 286-51, H.R.S., shall be charged a fee of Three Dollars ($3.00).

(2) Each new certificate of ownership issued by the Director of Finance under Section 286-55, H.R.S., shall be charged a fee of Three Dollars ($3.00).

(3) Duplicate certificates of ownership and registration, which are furnished under Section 286-55, H.R.S., shall be charged a fee of Three Dollars ($3.00).

(4) Motor vehicle plates issued to manufacturers or dealers under Section 286-53, H.R.S., shall be charged a fee of Thirty Dollars ($30.00) for the life of the plates.

(5) Motor vehicle plates issued under Section 249-7, H.R.S., shall be charged a fee of Five Dollars ($5.00).

(6) Duplicate emblems issued pursuant to Section 249-8, H.R.S., shall be charged a fee of fifty cents (50¢). (Ord. No. 39, March 2, 1932; Sec. 23-4.2, R.C.O. 1976; Ord. No. 425, May 1, 1982)

Sec. 5-2.5 Delinquent Penalties.

Any vehicle weight tax imposed by this Article for any year and not paid when due, shall become delinquent and a penalty of twenty per cent (20%) of the vehicle weight tax assessed shall be added to, and become part of, the tax collected. (Ord. No. 432, August 23, 1982)

Sec. 5-2.6 Beautification Fee.

(a) Except for U-drive motor vehicles, all motor vehicles located in the County at the time of registration shall be subject to an annual beautification fee of five dollars ($5.00) per certificate of registration. All U-drive motor vehicles located in the County at the time of registration shall be subject to an annual beautification fee of one dollar ($1.00) per certificate of registration. As used in this paragraph (a), "U-drive motor vehicle" shall have the meaning ascribed to it in H.R.S. Section 286-2.

(b) Two dollars ($2.00) of the beautification fee shall be used for purposes of beautification and other related activities of highways under the ownership, control, and jurisdiction of the County. All amounts received from any fee increase over two dollars ($2.00) shall be expended only for purposes of defraying additional costs involved in the disposition and other related activities of abandoned or derelict vehicles under H.R.S. chapter 290.

(c) The moneys collected shall be placed and accounted for in the Highway Beautification and Disposal of Abandoned or Derelict Vehicles Revolving Fund. (Ord. No. 438, December 1, 1982; Ord. No. 589, August 1, 1991; Ord. No. 747, February 23, 2000; Ord. No. 754, November 30, 2000)

CHAPTER 5A

REAL PROPERTY TAX

ARTICLE 1. ADMINISTRATION

Sec. 5A-1.1 Definitions.

Wherever used in this chapter:

"Director" shall mean the Director of Finance of the County of Kauai or the authorized subordinate of the Director. "Native forest land" means land either stocked with trees at a crown density of at least ten (10) percent or covered with shrubs to a crown density of at least fifty (50) percent, with at least fifty (50) percent of the stock of trees or shrubs being of a species indigenous to Hawaii. Indigenous means trees or shrubs that became established or evolved in the Hawaiian Islands without the aid of human hands.

"Property" or "real property" shall mean and include all land and appurtenances thereof and the buildings, structures, fences, and improvements erected on or affixed to the same, and any fixture which is erected on or affixed to such land, building structures, fences, and improvements, including all machinery and other mechanical or other allied equipment and the foundations thereof, whose use thereof is necessary to the utility of such land, buildings, structures, fences, and improvements, or whose removal therefrom cannot be accomplished without substantial damage to such land, buildings, structures, fences, and improvements, excluding, however, any growing crops. The temporal division of any interest in real property shall not, in and of itself, affect its status as real property.

"Plan manager" shall have the meaning ascribed to it in section 514E-1, Haw. Rev. Stat., as amended.

"Time share interest" shall have the meaning ascribed to it in section 514E-1, Haw. Rev. Stat., as amended.

"Time share plan" shall have the meaning ascribed to it in section 514E-1, Haw. Rev. Stat., as amended.

"Time share unit" shall have the meaning ascribed to it in section 514E-1, Haw. Rev. Stat., as amended.

"Time share unit owner" means any person who owns a time share interest.

"Unusable or unsuitable for any agricultural use" means land which is physically incapable of being put to any agricultural use, such as gulches, mountains or pali, eroded bedrock, or rocky, hilly, or barren land. (Ord. No. 377, July 1, 1981; Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987; Ord. No. 713, November 22, 1996; Ord. No. 742, September 24, 1999)

Sec. 5A-1.2 Duties And Responsibilities Of The Director.

The director shall have the following duties and powers, in addition to any others prescribed or granted by this chapter.

(1) Assessment: To assess, pursuant to law, all real property situated within the geographic boundary of this County for taxation and to make any other assessment by law required to be made by the director.

(2) Collections: To be responsible for the collection of all taxes imposed by this chapter and for such other duties as are provided by law.

(3) Construction of revenue laws: To construe the provisions of this chapter, the administration of which is within the scope of the director's duties, whenever requested by any officer or employee of the County or by any taxpayer.

(4) Enforcement of penalties: To see that penalties are enforced when prescribed by this chapter (the administration of which is within the scope of the director's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any provisions of this chapter; in the execution of these powers and duties, the director may call upon the county attorneys or prosecutor, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities and punishments for violation of the provisions of this chapter in respect to the assessment and taxation of property.

(5) Forms: To prescribe forms to be used in or in connection with the provisions of this chapter including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the provisions of this chapter and to change the same from time to time as deemed necessary.

(6) Maps: The director shall provide maps drawn to appropriate scale, showing all parcels, blocks, lots, or other divisions of land based upon ownership which shall be current as practicable under the circumstances surrounding the particular parcel, and their areas or dimensions, numbered or otherwise designated in a systematic manner for convenience of identification, valuation, and assessment. The maps, as far as possible, shall show the names of owners of each division of land, and shall be revised from time to time as further divisions of parcels occur. The director shall also maintain, as and when such information is available, maps showing present use, zoning, and physical use capabilities of land for the guidance of assessors and the information of various tax review tribunals and the general public.

The director shall charge fees for the use and other disposition of tracings of these maps, including copies or prints made therefrom, by private persons or firms as provided for by ordinance.

(7) Inspection, examination of records: To inspect and examine the records kept in any public office without charge, and to examine the books and papers of account of any person for the purpose of enabling the director to obtain all information that could, in any manner, aid in discharging the duties granted under this chapter.

(8) Recommendations for legislation: To recommend to the Mayor such amendments, changes or modifications of the provisions of this chapter or any applicable State statutes as may seem proper or necessary to remedy injustice or irregularity or to

facilitate the assessment of property under this chapter.

(9) Report to Mayor: To report to the Mayor annually, and at such other times and in such manner as the Mayor may require, concerning the acts and doings and the administration of the finance department, and such other matters of information concerning real property taxation as may be deemed of general interest; and the Mayor shall transmit copies of such reports to the Council.

(10) Rules and Regulations: To promulgate such rules and regulations deemed proper to effectuate the purposes of this chapter and to regulate matters of procedure pursuant to the provisions of Chapter 91, H.R.S.

(11) Compromises: With the approval of the county attorney, to compromise any claim arising under this chapter not exceeding $500, and if a claim exceeds $500, the director shall obtain the approval of the Council; and in any such case there shall be placed on file in the Department of Finance a statement of (1) the amount of tax assessed, or proposed to be assessed; (2) the amount of penalties and interest imposed or proposed to be assessed; (3) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item; (4) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and (5) the reasons for the compromise.

(12) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, regulation, or construction of the provisions of this chapter shall be applied without retroactive effect.

(13) Remission of delinquency penalties and interest: Except in cases of fraud or willful violation of the provisions of this chapter the director may remit any amount of penalties or interest added, under this chapter, to any tax that is delinquent for not more than ninety (90) days, in a case of excusable failure to pay a tax within the time required by this chapter, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the office of the Director a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved.

(14) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under this chapter, in respect to any taxable period, or in respect to one or more separate items

affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the County, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (1) the matters agreed upon shall not be reopened, and the agreement shall not be modified by any officer or employee of the County; and (2) in any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

(15) Other powers and duties: In addition to the powers and duties contained in this section, the powers and duties contained in this chapter for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed hereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, and receiving and enforcing payment of the taxes imposed under the authority of this chapter and Sections 243-5 and 243-6, H.R.S., relating to fuel tax. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.3 Oaths.

The director may administer all oaths or affirmations required to be taken or be administered under this chapter. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.4 Hearings And Subpoenas.

The director may conduct any inquiry, investigation, or hearing, relating to any assessment, or the amount of any tax, or the collection of any delinquent tax, including any inquiry or investigation into the financial resources of any delinquent taxpayer or the collectibility of any delinquent tax. The director may administer oaths and take testimony under oath relating to the matter of inquiry or investigation, and subpoena witnesses and require the production of books, papers, documents, and records pertinent to such inquiry. If any person disobeys such process, or, having appeared in obedience thereto, refuses to answer pertinent questions asked by the director or to produce any books, papers, documents or records, pursuant thereto, the director may apply to the appropriate court or to any judge of such court as prescribed in Section 231-7, H.R.S., setting forth such disobedience to process or refusal to answer, and such court or judge shall cite such person to appear before such court or judge to answer such questions or to produce such books, papers, documents, or records, and upon refusal so to do, commit such person to jail until said person testifies, but not for a longer

period than sixty (60) days. Notwithstanding the serving of the term of commitment by any person, the director may proceed in all respects as if the witness had not previously been called upon to testify. Witnesses (other than the taxpayer or the taxpayer's officers, directors, agents and employees) shall be allowed their fees and mileage as in cases in the circuit courts to be paid on vouchers of the County from any moneys available for expenses of the director. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.5 Timely Mailing Treated As Timely Filing And Paying.

(a) General Rule. Any report, claim, statement, or other document required or authorized to be filed with or any payment made to the County which is:

(1) Transmitted through the United States mail, shall be deemed filed and received by the County on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it.

(2) Mailed but not received by the County or where received and the cancellation mark is illegible, erroneous, or omitted, shall be deemed filed and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing; and in cases of the nonreceipt of a report, statement, remittance, or other document required by law to be filed, the sender files with the County a duplicate within thirty (30) days after written notification is given to the sender by the County of its nonreceipt of the report, statement, remittance, or other document.

(b) Registered mail, certified mail, certificate of mailing. If any report, claim, statement, remittance, or other document is sent by United States registered mail, certified mail, or certificate of mailing, a record authenticated by the United States Post Office of the registration, certification, or certificate shall be considered competent evidence that the report, claim, statement, remittance, or other document was delivered to the director or Department of Finance, and the date of registration, certification, or certificate shall be deemed the postmarked date. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.6 Tax Collection; General Duties, Powers Of Director.

The director shall collect all taxes under this chapter according to the assessments and shall be liable and

responsible for the full amount of the taxes assessed, unless the noncollection of taxes are accounted for under oath, or if release from accountability is provided in Sec. 5A-1.8. The county attorney of each county shall assist the director in the collection of all taxes under this chapter. (Ord. No. 394, July 1, 1981; Ord. No. 437, October 5, 1982; Ord. No. 511, December 9, 1987)

Sec. 5A-1.7 District Court Judges; Jurisdiction Over Misdemeanors And Actions For Tax Collections.

Except as otherwise provided in this chapter, the judges of the district courts in this county shall, as authorized in Section 231-12, H.R.S., have jurisdiction to try misdemeanors arising under this chapter and all complaints for the violation of this chapter and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of payment of all taxes assessed thereunder, and all actions or judgements obtained in tax actions and proceedings, notwithstanding the amount claimed. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.8 Director; Collection, Records Of Delinquent Taxes, Uncollectible Delinquent Taxes.

The director shall be responsible for the collection and general administration of all delinquent taxes and shall duly and accurately account for all delinquent taxes collected.

The department of finance shall prepare and maintain a complete record, open to public inspection, of the amounts of taxes assessed which have become delinquent with the name of the delinquent taxpayer in each case, but it shall not be necessary to periodically compute on the records the amount of penalties and interest upon delinquent taxes.

The department may, from time to time, prepare lists of all taxes delinquent which, in the judgement of the director of finance, are uncollectible; provided there is documentation on the collection efforts in each delinquent case file. Such taxes as the department finds to be uncollectible shall be entered in a special uncollectible delinquent taxes record and be deleted from the other books kept by the department, and the department shall thereupon be released from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two (2) years and does not exceed $1,000. Uncollectibles which exceed $1,000 shall be deleted only upon the approval of the County Council. Any items so deleted may be transferred back to the delinquent tax roll if the department finds that such items are, in fact, collectible or that the alleged

facts as previously presented to it were not true. (Ord. No. 394, July 1, 1981; Ord. No. 437, October 5, 1982; Ord. No. 511, December 9, 1987)

Sec. 5A-1.9 Legal Representative.

The county attorney or the prosecutor, depending upon whether the subject or case is civil or criminal, shall assign one of the attorney deputies as attorney and legal advisor and representative of the director. The county attorney or the prosecutor, depending upon whether the subject or case is civil or criminal, may proceed to enforce payment of any delinquent taxes by any means provided by law. Any legal proceeding may be instituted in the name of the director or the deputy director. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.10 Abstracts Of Registered Conveyances, Copies Of Corporation Exhibits, Etc., Furnished To Director.

The director may request abstract of titles. For the purpose of assisting the director in arriving at a correct valuation of the property within each district, the registrar of conveyances, director of commerce and consumer affairs, and any other State agency shall furnish any and all necessary documents for such purpose to the director as prescribed in Section 246-22, H.R.S. (Ord. No. 377, July 1, 1981; Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.11 (Reserved)

Sec. 5A-1.12 (Reserved)

Sec. 5A-1.13 (Reserved)

Sec. 5A-1.14 Notices, How Given.

Unless otherwise provided, every notice, the giving of which by the director is required or authorized, shall be deemed to have been given on the date when the notice was mailed properly addressed to the addressee at the last known address or place of business. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.15 (Reserved)

Sec. 5A-1.16 Records Open To Public.

All maps and records compiled, made, obtained or received by the director shall be public records, subject to HRS 92E, Fair Information Practice, and in case of the death, removal or resignation of any such officers, shall immediately pass to the care and custody of their respective successors. The information and all maps and records

connected with the assessment and collection of taxes under this chapter shall, during business hours, be open to the inspection of the public. (Ord. No. 394, July 1, 1981; Ord. No. 511, December 9, 1987)

Sec. 5A-1.17 Evidence, Tax Records As.

In respect of any tax imposed or assessed under this chapter, the administration of which is within the scope of the director's duties and except as otherwise specifically provided in the law imposing the tax, the notices of assessments, records of assessments, and lists or other records of payments and amounts unpaid prepared by or under the authority of the director, or copies thereof, shall be prima facie proof of the assessment of the property or person assessed, the amount due and unpaid, and the delinquency in payment, and that all requirements of law in relation thereto have been complied with. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.18 Due Date On Saturday, Sunday Or Holiday.

When the due date for any remittance or document required by any ordinance imposing a tax falls on a Saturday, Sunday or legal holiday, the remittance or document shall not be due until the next succeeding day which is not a Saturday, Sunday or legal holiday. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.19 Changes, Etc., In Assessment Lists.

Except as specifically provided in this chapter, no changes in, additions to or deductions from, the real property tax assessments on the assessment lists prepared as provided in Sec. 5A-2.2 shall be made except to add thereto property or assessments which may have been omitted therefrom, or to deduct therefrom adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors and errors in calculation. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.20 Adjustments And Refunds.

(a) This subsection shall apply to taxes assessed and collected under this chapter.

(1) In the event of adjustments on account of duplicate assessments and clerical errors, such as transposition in figures, typographical errors and errors in calculations, the adjustments may be entered upon the records although the full amount appearing on the records prior to such adjustment has been paid.

(2) There may be refunded in the manner provided in subsection (b) of this section any amount collected in excess of the amount appearing on the records as adjusted, or any amount constituting a duplication of payment in whole or in part.

(3) Whenever any real property is deemed by the director to be exempt from taxation under Sec. 5A-11.20, if there shall have been paid prior to the effective date of the exemption any real property taxes applicable to the period following the effective date of the exemption, there shall be refunded to the nonprofit or limited distribution mortgagor owning the property in the manner provided in subsection (b) all amounts representing the real property taxes which have been paid on account of the property and attributable to the period following the effective date of the exemption.

(4) No such adjustment shall be entered on the records nor refund made except within two (2) years after the end of the tax year in which the amount to be refunded was due and payable, and a written application for the adjustment or refund has been filed within such period.

(b) This subsection shall apply to all taxes.

(1) All refunds and adjustments shall be paid by voucher approved by the director setting forth the details of each transaction. Payment of such refund or adjustment shall be made out of the Real Property Tax Revolving Fund hereinafter created; provided, that if the person entitled to a refund or adjustment is delinquent in the payment of the tax, the director, after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund or adjustment and apply the same to the amount owed.

(2) There is hereby appropriated, from the general revenues of the County not otherwise appropriated, the sum of $50,000 which shall be set aside as a special fund to be known as the Real Property Tax Revolving Fund. All refunds of taxes collected under this chapter shall be made out of the Real Property Tax Revolving Fund. The director may, from time to time, deposit taxes collected under this chapter to the credit of the Real Property Tax Revolving Fund so that there may be maintained at all times a fund not exceeding $50,000. (Ord. No. 394, July 1, 1981; Ord. No. 512, December 9, 1987)

Sec. 5A-1.21 Partial Payment Of Taxes.

Whenever a taxpayer makes a partial payment of a particular assessment of taxes, the amount received by the director shall first be credited to interest, then to penalties, and then to principal. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.22 (Reserved)

Sec. 5A-1.23 Abetting, Etc., Misdemeanor.

All persons willfully aiding, abetting or assisting, in any manner whatsoever, any person to commit any act constituted a misdemeanor by this chapter, shall be deemed guilty of a misdemeanor. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.24 Neglect Of Duty, Etc., Misdemeanor.

Any officer or employee of the department of finance, any person duly authorized by the director, or any police officer, on whom duties are imposed under this chapter, who willfully fails or refuses or neglects to perform faithfully any duty or duties of him required by this chapter, shall be deemed guilty of a misdemeanor. (Ord. No. 394, July 1, 1981)

Sec. 5A-1.25 Penalty For Misdemeanors.

Any person convicted of any misdemeanor under this chapter, for which no punishment is otherwise prescribed, shall be fined not more than $500, or (if a natural person) imprisoned for not more than one (1) year, or both. (Ord. No. 394, July 1, 1981)

ARTICLE 2. NOTICE OF ASSESSMENTS AND LISTS

Sec. 5A-2.1 Notice Of Assessments; Addresses Of Persons Entitled To Notice.

On or before March 15 preceding the tax year, the director shall give notice of the assessment for the tax year against each known owner, by personal delivery to the owner of or by mailing to him on or before such date, postage prepaid and addressed to him at his last known place of residence or address, a written notice identifying the property involved by the tax key and the general class established in accordance with Sec. 5A-8.1(c) and setting forth separately the valuation placed upon buildings, and the valuation placed upon all other real property, exclusive of buildings, determined pursuant to Sec. 5A-8.1(a), the exemption, if any, allowed or denied, as the case may be, and the amount of the exemption applied to the buildings and the amount applied to all other real property, exclusive of buildings, and the net taxable value of the buildings and the net taxable value of all other real property, exclusive of the buildings; provided that for property subject to a time share plan, the director shall give notice of the assessment of each time share unit to the plan manager of the time share plan in the manner provided in this section. The plan manager shall be responsible for allocating the valuation of each time share unit among the various time share unit owners.

In addition to the foregoing, the director shall, in each year, give notice of the assessments for the year by public notice (by publication thereof at least three times on different days during the month of March of such year in a newspaper of general circulation, published in the English

language) of a time when (which shall be not less than a period of ten (10) days prior to March 31 preceding the tax year) and of a place where the records of taxable properties maintained in the district showing all assessments made for the district may be inspected by any person for the purpose of enabling him to ascertain what assessments have been made against him or his property and to confer with the director so that any errors may be corrected before the filing of the assessment list. (Ord. No. 394, July 1, 1981; Ord. No. 718, November 22, 1996)

Sec. 5A-2.2 Assessment Lists.

On or before May 1 preceding the tax year, the director shall have prepared from the records of taxable properties a list in duplicate of all assessments made, which list shall be signed and sworn to by the person preparing it. The assessment list shall identify the property tax assessed by its tax key and shall set forth the general class of the property established in accordance with Sec. 5A-8.1(c), the valuation of buildings and the valuation of all other real property, exclusive of buildings, the amount of exemption allowed on buildings and the amount of exemption allowed on all other real property, exclusive of the buildings, and the net taxable value of the buildings and the net taxable value of all other real property, exclusive of the buildings. The assessment lists shall be the lists in accordance with which taxes shall be collected, subject only to change made by any court or other tribunal having jurisdiction, where appeals from assessments have been duly taken and prosecuted to final determination, and subject to Sec. 5A-1.19. There shall be noted upon such lists all appeals taken for the year, including the valuation in dispute for the buildings and the valuation in dispute for the other real property, exclusive of the buildings in each case. The original of the assessment lists shall be retained by the person preparing it, and one (1) copy shall be held by the county clerk. (Ord. No. 394, July 1, 1981; Ord. No. 646, January 20, 1994)

Sec. 5A-2.3 Informalities Not To Invalidate Assessments, Mistakes In Names Or Notices, Etc.

No assessment or act relating to the assessment or collection of taxes under this chapter shall be illegal or invalidate such assessment, levy, or collection on account of mere informality, nor because the same was not completed within the time required by law, nor, if the notice by publication provided for by Sec. 5A-2.1 has been given, on account of a mistake in the name of the owner or supposed owner of the property assessed, or failure to name the owner, or failure to give the notice of assessment by personal delivery or mail provided for by Sec. 5A-2.1. (Ord. No. 394, July 1, 1981)

ARTICLE 3. TAX BILLS, PAYMENTS AND PENALTIES

Sec. 5A-3.1 Tax Rolls; Tax Bills.

The director shall prepare tax rolls from the assessment lists provided for by Sec. 5A-2.2, showing thereon, in each case, names and addresses of the assessed and amount of taxes which shall be not less than the amount as provided for in Sec. 5A-6.3. Time share real property shall be listed on the tax rolls as a single entry for each time share unit.

The director shall mail, postage prepaid, or deliver, each year on or before the billing dates as provided for by Sec. 5A-3.2, to all known persons assessed for real property taxes for such year, respectively, or to their agents, tax bills demanding payment of taxes due from each such person, respectively, but no person shall be excused from the payment of any tax or delinquent penalties thereon by reason of failure on his part to receive, or failure on the part of the director so to mail or deliver such bill. The bill, if mailed, shall be addressed to the person concerned at his last known address or place of residence. Whenever any bill covers taxes for any real property owned, jointly or as tenants in common or otherwise, by more than one person, the bill may be sent to any one co-owner and upon written request shall be sent to each known co-owner but shall, in any event, demand the full amount of the taxes due upon such real property. For real property subject to a time share plan, the director shall mail tax bills in the manner provided in this section to the plan manager of the time share plan. Notwithstanding any provision in this section to the contrary, the plan manager of the time share plan shall be primarily liable for the payment of real property taxes due on the time share units under the plan manager's authority. (Ord. No. 394, July 1, 1981; Ord. No. 513, December 9, 1987; Ord. No. 713, November 22, 1996)

Sec. 5A-3.2 Taxes; Due When; Installment Payments; Billing And Delinquent Dates.

All real property taxes shall be due and payable on and after July 1 of each tax year and the payment thereof shall be determined in the following manner:

All known persons assessed for real property taxes shall be billed not later than the billing date designated in the schedule listed herein; subject, however, to the limitations heretofore provided in Sec. 5A-3.1. Each taxpayer shall pay the real property taxes due from him, for the year in which the taxes are assessed, in two (2) equal installments on or before the dates designated in the following schedule:

Fiscal Year Schedule

(Billing Date)	(1st Payment)	(2nd Payment)
July 20	August 20	February 20

All such taxes due on the first payment date of such year from each taxpayer, which remain unpaid after the date, shall thereupon become delinquent, and the balance of such taxes due on the second payment date of such year from each taxpayer, which remain unpaid after the date, shall thereupon become delinquent. (Ord. No. 394, July 1, 1981)

Sec. 5A-3.3 Penalty For Delinquency.

There shall be added to the amount of all delinquent taxes, a penalty of up to ten per cent (10%) of such delinquent taxes as determined by the director, which penalty shall be and become a part of the tax and be collected as a part thereof.

All delinquent taxes and penalties shall bear interest at the rate of one per cent (1%) for each month or fraction thereof until paid, beginning with the first calendar month following the calendar month designated for payment in Sec. 5A-3.2. The interest shall be and become a part of the tax and be collected as a part hereof.

No taxpayer shall be exempt from delinquent penalties by reason of having made an appeal on his assessment, but the tax paid, covered by an appeal duly taken, shall be held in a trust account as provided in Sec. 5A-12.12. (Ord. No. 394, July 1, 1981; Ord. No. 514, December 9, 1987)

Sec. 5A-3.4 Assessment Of Omitted Property; Review; Penalty.

If for any other reason any real property has been omitted from the assessment lists for any year or years, the director shall add to the lists the omitted property. Notice of the action shall be given the owner, if known, within ten (10) days after the assessment or addition, by mailing the same addressed to him at his last known place of residence. Any owner desiring a review of the assessment or the addition may appeal to the Board of Review by filing with the director a written notice thereof in the manner prescribed in Sec. 5A-12.9 at any time within thirty (30) days after the date of mailing such notice, or may appeal to the tax appeal court by filing written notice of appeal with, and paying the necessary costs to, such court within the period and in the manner prescribed in Sec. 5A-12.8.

For the purpose of determining the date of delinquency of taxes pursuant to assessments under this section, such taxes shall be deemed delinquent if not paid within thirty (30) days after the date of mailing of the notice of assessment, or if assessed for the current assessment year, within thirty (30) days after the date of mailing the notice or on or before the

next installment payment date, if any, for such taxes, whichever is later; provided that if taxes are assessed for the current tax year and if the assessment is mailed by the department at least 30 days prior to the due date of the first installment, referenced to in Sec. 5A-3.2, the taxpayer may elect to pay fifty per cent (50%) of the taxes due for the current tax year on or by the first installment due date and the remaining fifty per cent (50%)

on or by the second installment due date. Said taxes will be deemed delinquent after each respective due date referred to in Sec. 5A-3.2.

There shall be added to the amount of delinquent taxes, a penalty of up to ten per cent of such delinquent taxes as determined by the director, which penalty shall be and become a part of the tax and be collected as a part thereof.

All delinquent taxes and penalties shall bear interest at the rate of one per cent for each month or fraction thereof until paid, beginning with the first calendar month following the calendar month designated for payment. The interest shall be and become a part of the tax and be collected as a part hereof.

No taxpayer shall be exempt from delinquent penalties by reason of having made an appeal on his assessment, but the tax paid, covered by an appeal duly taken, shall be held in a trust account as provided in Section 5A-12.12. (Ord. No. 394, July 1, 1981; Ord. No. 515, December 9, 1987)

Sec. 5A-3.5 Reassessments.

Any property assessed to a person or persons who did not have the record title upon January 1 preceding the tax year in which the assessment is made, may be, and in any case where the attempted assessment of property is void or so defective as to create no real property tax lien on the property and the taxes have not been fully collected, the property shall be assessed as omitted property in the manner provided by Sec. 5A-3.4. (Ord. No. 394, July 1, 1981)

ARTICLE 4. REMISSIONS

Sec. 5A-4.1 Remission Of Taxes On Acquisition By Government.

Whenever any real property is acquired for public purposes by the United States, the State or the County, and whenever any government lease or other tenancy shall terminate, the director is authorized to remit the taxes due thereof for the balance of the taxation period or year from and after the date of acquisition of the property, or the termination of the government lease or other tenancy, as the case may be.

In case the State or the County takes possession of real property which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land by the State or such County, taxes are authorized to be remitted as provided in Sections 101-35 to 39, H.R.S., subject to Section 101-39(1).

In case the owner of real property grants to the State or any County thereof a right of entry with respect to such real property and the State or County enters into possession under the authority of the right of entry with intention to acquire the fee simple estate therein and to devote the real property to public use, the State or such County shall certify to the director the date upon which it took possession, and upon receipt of the certificate the director is authorized to remit the real property tax on the parcel of land or portion of a parcel of land so coming into the possession of the State or the County for the balance of the taxation period which is subsequent to the date of possession.

In case the United States takes possession of real property which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land, taxes are authorized to be remitted for the balance of the taxation period or year after such taking, as provided in this paragraph. The remission shall be allowed conditionally upon the presentation to the director, of a written notice and agreement, signed by the person, or one or more of the persons, owning the land, stating the date of such taking of possession by the United States, and agreeing that out of the first funds received by such owner or owners from such condemnation there shall be paid sufficient moneys to discharge the lien for any real property taxes existing upon the land prorated up to and including the date of such taking possession of the property; provided that the notice may be accompanied by payment of the prorated amount of taxes in lieu of such agreement. Section 101-39, H.R.S., is hereby made applicable to such land and the owner or owners thereof and to the conditional remission authorized by this paragraph. It is further provided that in the event the prorated taxes up to the time of such taking possession shall not be paid by the owner or by one or more of the owners of the land within ten (10) days after receipt by such owner or owners of the compensation for the condemnation, or within such additional time as shall be allowed by the director, then the conditional remission of taxes shall be void, and such owner or owners shall be liable for all taxes, penalties, and interest which would have accrued had no such conditional remission been allowed. (Ord. No. 394, July 1, 1981)

Sec. 5A-4.2 Remission Of Taxes In Cases Of Certain Disasters.

In any case of the damage or destruction of real property as the result of a tidal wave, earthquake, or volcanic eruption, or as the result of flood waters overflowing the banks or walls of a river or stream, the director is authorized to remit taxes due on such property, to the extent and in the manner hereinafter set forth:

(1) The director shall determine whether the property was wholly destroyed, or was partially destroyed or damaged, and in the latter event shall determine what percentage of the value of the whole property was destroyed or otherwise lost by reason of the disaster.

(2) If the property was wholly destroyed, the amount remitted shall be such portion of the total tax on the property for the tax year in which such destruction occurred as shall constitute the portion of the tax year remaining after such destruction.

(3) If the property was partially destroyed or was damaged, the percentage of the value destroyed or otherwise lost, determined as provided in paragraph 1, shall be applied to the total tax on the property, and of the amount of tax so determined there shall be remitted such portion as shall constitute the portion of the tax year remaining after such partial destruction or damage.

(4) Application for a remission of taxes pursuant to this section shall be filed with the director on or before June 30 of the tax year involved, or within sixty (60) days after the occurrence of the disaster, whichever is the later. Any amount of taxes authorized to be remitted by this section, which has been paid, shall be refunded upon proper application therefor out of real property tax collections. (Ord. No. 394, July 1, 1981)

ARTICLE 5. LIENS, FORECLOSURES

Sec. 5A-5.1 Tax Liens; Co-Owners' Rights; Foreclosure; Limitation.

Every tax due upon real property, as defined by Sec. 5A-1.1, shall be a paramount lien upon the property assessed, which lien shall attach as of July 1 in each tax year and shall continue for six (6) years. If proceedings for the enforcement or foreclosure of the lien are brought within the applicable period hereinabove designated, the lien shall continue until the termination of said proceedings or the completion of such sale.

The department may record with the State of Hawaii, Bureau of Conveyances, a certificate setting forth the amount of taxes due and unpaid which has been returned, assessed, or as to which a notice of proposed assessment has been issued. The certificate shall identify the taxpayer, the taxpayer's last known address, and the taxes involved. The recording or filing of the certificate shall have the effect set forth in this section, but nothing in this section shall be deemed to require that a certificate recorded or filed by the department must include the amount of any penalty or interest, in order to protect said lien. Recordation of the certificate in the Bureau of Conveyances shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under Chapter 501 of the

Hawaii Revised Statutes. Any cost incurred in the filing of the certificate shall be a part of the lien for the tax therein set forth.

In case of cotenancy, if one cotenant pays, within the period of the aforesaid government lien, all of the real property taxes, interest, penalties, and other additions to the tax, due and delinquent at the time of payment, he shall have pro tanto, a lien on the interest of any noncontributing cotenant upon recording in the Bureau of Conveyances, within ninety (90) days after the payment so made by the cotenant, a sworn notice setting forth the amount claimed, a brief description of the land affected by tax key or otherwise, sufficient to identify it, the tax year or years, and the name of the cotenant upon whose interest such lien is asserted. When a notice of such tax lien is recorded by a cotenant, the registrar shall forthwith cause the same to be indexed in the general indexes of the Bureau of Conveyances. In case the land affected is registered in the Land Court, the notice shall also contain a reference to the number of the certificate of title of such land and shall be filed and registered in the Office of the Assistant Registrar of the Land Court, and the registrar, in his capacity as assistant registrar of the Land Court, shall make a notation of the filing thereof on each Land Court Certificate of Title so specified.

The cotenant's lien shall have the same priority as the lien or liens of the government for the taxes paid by him, and may be enforced by an action in the nature of suit in equity. The lien shall continue for three (3) years after recording or registering, or until termination of the proceedings for enforcement thereof if such proceedings are begun, and notice of the pendency thereof is recorded or filed and registered as provided by law, within the period.

The director or subordinate, in case of a government lien, and the creditor cotenant, in case of a cotenant's lien, shall, at the expense of the debtor, upon payment of the amount of the lien, execute and deliver to the debtor a sworn satisfaction thereof, including a reference to the name of the person assessed or cotenant affected as shown in the original notice, the date of filing of the original notice, a description of the land involved, and the number of the certificate of title of such land if registered in the land court, which, when recorded in the Bureau of Conveyances or filed and registered in the Office of the Assistant Registrar of the Land Court, shall, in the case of a cotenant's lien, which contains the reference to the book and page of the original lien, be entered in the general indexes of the Bureau of Conveyances, and if a notation of the original notice was made on any Land Court Certificate of Title, the filing of such satisfaction shall also be noted on the certificate.

This section as to cotenancy shall apply, as well, in any case of ownership by more than one assessable person.

Upon enforcement or foreclosure by the government in any manner whatsoever of any such real property tax lien, all taxes, of whatsoever nature and howsoever accruing, due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed, shall be satisfied as far as possible out of the proceeds of the sale remaining after payment of (A) the costs and expenses of the enforcement and foreclosure including a title search, if any; (B) the amount of subsisting real property tax liens; and (C) the amount of any recorded liens against the property, in the order of their priority, provided a claim for the surplus has been filed with the director within one year from the date of the sale.

The liens may be enforced by action of the director in the circuit court and jurisdiction is conferred upon the circuit court to hear and determine all proceedings brought or instituted to enforce and foreclose such tax liens, and the proceedings had before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings. If the owners or claimants of the property against which a lien is sought to be foreclosed are at the time out of the County or cannot be served within the County, or if the owners are unknown, and the fact shall be made to appear by affidavit to the satisfaction of the court, and it shall in like manner, appear prima facie that a cause of action exists against such owners or claimants or against the property described in the complaint, or that such owners or claimants are necessary or proper parties to the action, the court may grant an order that the service may be made in the manner provided by Chapter 634, H.R.S.

In any such case it shall not be necessary to obtain judgment and have execution issued and returned unsatisfied before proceeding to foreclose the lien for taxes in the manner herein provided. (Ord. No. 394, July 1, 1981; Ord. No. 516, December 9, 1987; Ord. No. 573, July 16, 1990; Ord. No. 658, July 7, 1994)

Sec. 5A-5.2 Tax Liens; Foreclosure Without Suit, Notice.

All real property on which a lien for taxes exists may be sold by way of foreclosure without suit by the director, and in case any lien, or any part thereof, has existed thereon for three (3) years, shall be sold by the director at public auction to the highest bidder, for cash, to satisfy the lien, together with all interest, penalties, costs, and expenses due or incurred on account of the tax, lien, and sale, the surplus, if any, to be rendered to the person thereto entitled. The sale shall be held at any public place proper for sales on execution, after notice published at least once a week for at least four (4) successive weeks immediately prior thereto in any newspaper with a general circulation published in the County. If the address of the owner is known or can be ascertained by due diligence, including an abstract

of title or title search, the director shall send to each owner notice of the proposed sale by registered mail, with request for return receipt. If the address of the owner is unknown, the director shall send a notice to the owner at his last known address as shown on the records of the Department of Finance. The notice shall be deposited in the mail at least forty-five (45) days prior to the date set for the sale. The notice shall also be posted for a like period in at least three (3) conspicuous public places within the County, and if the land is improved one of the three (3) postings shall be on the land. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.3 Same; Registered Land.

If the land has been registered in the Land Court, the director shall also send, by registered mail, a notice of the proposed sale to any person holding a mortgage or other lien registered in the Office of the Assistant Registrar of the Land Court. The notice shall be sent to any such person at his last address as shown by the records in the Office of the Registrar, and shall be deposited in the mail at least forty-five (45) days prior to the date set for the sale. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.4 Same; Notice, Form Of.

The notice of sale shall contain the names of the persons assessed, the names of the present owners (so far as shown by the records of the director and the records, if any, in the Office of the Assistant Registrar of the Land Court) the character and amount of the tax, and the tax year or years, with interest, penalties, costs, expenses, and charges accrued or to accrue to the date appointed for the sale, a brief description of the property to be sold, and the time and place of sale, and shall warn the persons assessed, and all persons having or claiming to have any mortgage or other lien thereon or any legal or equitable right, title, or other interest in the property, that unless the tax, with all interest, penalties, costs, expenses, and charges accrued to the date of payment, is paid before the time of sale appointed, the property advertised for sale will be sold as advertised. The director may include in one advertisement of notice of sale notice of foreclosure upon more than one parcel of real property, whether or not owned by the same person and whether or not the liens are for the same tax year or years. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.5 Same; Postponement Of Sale, Etc.

If at the time appointed for the sale the director shall deem it expedient and for the interest of all persons concerned therein to postpone the sale of any property or properties for want of purchasers, or for other sufficient cause, he may postpone it, from time to time, until the sale shall be completed, giving notice of every such adjournment by a public declaration thereof at the time and place last

appointed for the sale; provided that the sale of any property may be abandoned at the time first appointed or any adjourned date, if no proper bid is received sufficient to satisfy the lien, together with all interest, penalties, costs, expenses, and charges. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.6 Same; Tax Deed; Redemption.

The director, on payment of the purchase price, shall make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title in fee thereto, and such title shall be free and clear of any lien, claim, or encumbrance against such property except the lien for real property taxes subsequent to that for which the property was sold, subject only to any mineral rights of the State and any easements in favor of any government entity; provided, that the taxpayer

may redeem the property sold by payment to the purchaser at the sale, within one (1) year from the date of the sale, of the amount paid by the purchaser, together with all costs and expenses which the purchaser was required to pay, including the fee for recording the deed, and in addition thereto, interest on such amount at the rate of twelve per cent (12%) a year. (Ord. No. 394, July 1, 1981; Ord. No. 573, July 16, 1990)

Sec. 5A-5.7 Same; Costs.

The director by rules or regulation may prescribe a schedule of costs, expenses, and charges and the manner in which they shall be apportioned between the various properties offered for sale and the time at which each cost, expense, or charge shall be deemed to accrue; and such costs, expenses, and charges shall be added to and become a part of the lien on the property for the last year involved in the sale or proposed sale, the tax for which is delinquent. Such costs, expenses, and charges may include provision for the making of and the securing of certificates of searches of any records to furnish information to be used in or in connection with the notice of sale or tax deed, or in any case where the director shall deem such advisable; provided that the director shall not be required to make such searches or to cause them to be made except as provided by Sec. 5A-5.3 with respect to mortgages or other liens registered in the Office of the Assistant Registrar of the Land Court. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.8 Tax Deed As Evidence.

The tax deed referred to in Sec. 5A-5.6 is prima facie evidence that:

(1) The property described by the deed was duly assessed for taxes in the years stated in the deed and to the persons therein named.

(2) The property described by the deed was subject on the date of the sale to a lien or liens for real property taxes, penalties, and interest in the amount stated in the deed, for the tax years therein stated, and that the taxes, penalties, and interest were due and unpaid on the date of sale.

(3) Costs, expenses, and charges due or incurred on account of the taxes, liens, and sale had accrued at the date of the sale in the amount stated in the deed.

(4) The person who executed the deed was the proper officer.

(5) At a proper time and place the property was sold at public auction as prescribed by law, and by the proper officer.

(6) The sale was made upon full compliance with Sec. 5A-5.2 to Sec. 5A-5.7 and all laws relating thereto, and after giving notice as required by law.

(7) The grantee named in the deed was the person entitled to receive the conveyance. (Ord. No. 394, July 1, 1981)

Sec. 5A-5.9 Disposition Of Surplus Moneys.

The director shall pay from the surplus all taxes, including interest and penalties, of whatsoever nature and howsoever accruing, as provided in Sec. 5A-5.1, and further he may pay from the surplus the cost of a search of any records where such search is deemed advisable by him to ascertain the person or persons entitled to the surplus; provided, nothing herein contained shall be construed to require the director to make or cause any such search to be made.

All proceeds remaining after payment of the costs and expenses of the enforcement and foreclosure of the tax lien, including a title search, and the amount of subsisting real property taxes, shall be distributed to lienholders of record in the order of their priority who have filed claims for the surplus with the director within one year from the date of sale. Any lien, claim or encumbrance against the property remaining unsatisfied after the distribution of the surplus moneys shall be extinguished and unenforceable against the property and the purchaser to whom the property is conveyed by the director. If, in order to ascertain the person or persons entitled to the surplus, the director deems it advisable to conduct a search of any records, he may pay from the surplus the cost of such search; provided, nothing herein contained shall be construed to require the director to make or cause any search to be made. Any lienholder failing to file a claim for the surplus within one year from the date of the sale shall have no right to the surplus. The director shall pay from any surplus remaining after distribution to record lienholders who have filed claims, all taxes, including interest and penalties, of whatsoever nature and howsoever accruing due at the time of the foreclosure sale from the taxpayer against whose property such tax lien is so enforced or foreclosed. If after payment of all taxes surplus funds remain, the director shall pay the surplus to the taxpayer against whose property the tax lien was foreclosed, provided that the taxpayer has filed a claim for the surplus with the director within one year from the date of sale. Any surplus remaining after payment to all those entitled as herein set forth shall be deposited into the County General Fund.

If the director is in doubt as to the person or persons entitled to the balance of the fund, he may refuse to distribute the surplus and any claimant may sue the director in the circuit court. The director may require the claimants to interplead, in which event he shall state the names of all claimants and shall cause them to be made parties to the action. If there are persons entitled to the fund who have not filed a claim, or if in the director's opinion there may be other persons entitled to the fund who are unknown, the

director may apply for an order or orders joining these persons.

Any orders of the court or summons in the matter may be served as provided by law or the rules of court, and all persons having any interest in the moneys who are known, including the guardians of such of them as are under legal age or under any other legal disability (and if any one or more of them is under legal age or under other legal disability and without a guardian, the court shall appoint a guardian ad litem to represent them therein) shall have notice of the action by personal service upon them. All persons having any interest in the moneys whose names are unknown or who, if known, do not reside within the County, or for any reason cannot be served with process within the County, shall have notice of the action as provided by Chapter 634, H.R.S., except that any publication of summons shall be held in at least one newspaper of general circulation published in the County of Kauai, and the form of notice to be published shall provide a brief description of the property which was sold.

All expenses incurred by the director shall be met out of the surplus moneys realized from the sale. (Ord. No. 394, July 1, 1981; Ord. No. 573, July 16, 1990)

Sec. 5A-5.10 Liens and Foreclosures Against Time Share Units.

In the case of real property which is subject to a time share plan, all provisions of article 5 relating to enforcement and collection of delinquent taxes shall be administered against any time share unit. The plan manager of a time share unit shall be primarily liable for the payment of any real property tax delinquencies due on a time share unit under the plan manager's authority. (Ord. No. 713, November 22, 1996)

ARTICLE 6. RATE

Sec. 5A-6.1 Rate And Levy.

Except as exempted or otherwise taxed, all real property shall be subject to a tax upon one hundred per cent (100%) of its fair market value determined in the manner provided by ordinance at such rate as shall be determined in the manner provided in Sec. 5A-6.3. No taxpayer shall be deemed aggrieved by an assessment, nor shall an assessment be lowered, except as the result of a decision on an appeal as provided by law. (Ord. No. 394, July 1, 1981; Ord. No. 420, January 1, 1983)

Sec. 5A-6.2 Tax Year; Time As Of Which Levy And Assessment Made.

For real property tax purposes, "tax year" shall mean the fiscal year beginning July 1 of each calendar year and ending June 30 of the following calendar year. Real property shall be assessed as of January 1 preceding each tax year and taxes shall be levied thereon in the manner and at the time provided in this chapter. (Ord. No. 394, July 1, 1981; Ord. No. 517, December 9, 1987)

Sec. 5A-6.3 Real Property Tax; Determination Of Rates.

(a) Unless a different meaning is clearly indicated by the context, as used in this section:

(1) "Net taxable lands" means all other real property exclusive of buildings.

(2) "Net taxable real property" or "net taxable buildings" or "net taxable lands" means, as indicated by the context, percentage of the fair market value of property determined under Sec. 5A-6.1, which the director certifies as the tax base as provided by law less exemptions as provided by law and, in all cases where appeals from the director's assessment are then unsettled, less fifty per cent (50%) of the value in dispute.

(b) The council may increase or decrease the tax rates for buildings and for all other real property, exclusive of buildings, for net taxable lands and net taxable buildings of each class of property established in accordance with subsection 5A-8.1(c). A resolution setting the tax rates shall be adopted on or before June 20 preceding the tax year for which property tax revenues are to be raised according to the following procedures:

(1) The council shall advertise its intention to increase or decrease tax rates and the date, time, and place of a public hearing in a newspaper of general circulation. The date of the public hearing shall be not less than ten (10) days after the advertisement is first published and shall set forth the tax rates to be considered by the council.

(2) After the public hearing provided for in paragraph (1), the council shall readvertise and reconvene within three (3) weeks to adopt a resolution fixing the tax rates for the tax year for which property tax revenues are to be raised. The advertisement shall state the new rates to be fixed and the date, time, and place of the meeting scheduled for fixing such rates. The date, time, and place of the meeting shall also be announced at the public hearing required by paragraph (1). If the resolution fixing the tax rates is not adopted within three (3) weeks from the public hearing required by paragraph (1), the council shall again advertise and meet as required by paragraph (1).

(3) If, after adopting an increase or decrease in the tax rates as provided by paragraphs (1) and (2), the council determines that it requires a further increase or decrease in a tax rate or fails to act in any specified period, the council shall readvertise and follow the requirements of paragraphs (1) and (2).

(c) The council shall set the tax rates for each class of property using the following method:

(1) Net taxable lands and net taxable buildings within each class of property shall be assigned a percentage of the total revenue to be derived from real property.

(2) The percentage of revenue to be raised from net taxable lands and net taxable buildings within each class shall be multiplied by the total revenue to be raised from real property in order to determine the amount of revenue to be derived.

(3) The amount of revenue to be raised from net taxable buildings within each class shall be divided by the net taxable value of buildings in that class to determine the tax rate which shall be expressed in terms of tax per $1,000 of net taxable buildings computed to the nearest cent.

(4) The amount of revenue to be raised from net taxable lands within each class shall be divided by the net taxable value of lands in that class to determine the tax rate which shall be expressed in terms of tax per $1,000 of net taxable lands computed to the nearest cent.

(d) If the tax rates for the tax year are increased or decreased, the council shall notify the director of the increased or decreased rates, and the director shall employ such rates in the levying of property taxes as provided by this chapter.

(e) The director shall, on or before May 1 preceding the tax year, furnish the council with a calculation certified as being as nearly accurate as may be, of the net

taxable real property within the county, separately stated for each class established in accordance with Sec. 5A-8.1(c) for net taxable lands and for net taxable buildings plus such additional data relating to the property tax base as may be necessary.

(f) Insofar as the validity of any tax rate is concerned, the provisions of subsections (b) and (e) of this section as to dates, shall be deemed directory; provided that all other provisions of subsections (b) and (e) and all provisions of subsections (c) and (d) shall be deemed mandatory.

(g) Notwithstanding any provision to the contrary, there shall be levied upon each individual parcel of real property taxable under this chapter a minimum real property tax of $25 a year. (Sec. 5-1.1, R.C.O. 1976; Ord. No. 394, July 1, 1981; Ord. No. 518, December 9, 1987; Ord. No. 561, December 27, 1989)

ARTICLE 7. REAL PROPERTY TO BE ASSESSED

Sec. 5A-7.1 Assessment Of Property; To Whom In General.

Real property shall be assessed in its entirety to the owner thereof; provided that where improved residential land has been leased for a term of fifteen (15) years or more, the real property shall be assessed in its entirety to the lessee or his successor in interest holding the land for such term under such lease and the lessee or successor in interest shall be deemed the owner of the real property in its entirety for the purposes of this chapter; provided, however, that the lease and any extension, renewal, assignment, or agreement to assign the lease (1) shall have been duly entered into and recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court prior to January 1 preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease; and provided further that real property subject to a time share plan shall be assessed in its entirety to the plan manager of the time share plan.

"Improved residential land" as used herein means land improved with a single family dwelling on it.

For the purposes of this chapter, life tenants, personal representative, trustees, guardians, or other fiduciaries may be, and persons holding government property under an agreement for the conveyance of the same to such persons shall be considered as owners during the time any real property is held or controlled by them as such. Lessees holding under any government lease shall be considered as owners during the time any real property is held or controlled by them as such, as more fully provided in Sec. 5A-11.17; and further, notwithstanding any provision

to the contrary in this chapter, any tenant occupying government land, whether such occupancy be on a permit, license, month-to-month tenancy, or otherwise, shall be considered as owner where such occupancy has continued for a period of one (1) year or more, as more fully provided in Sec. 5A-11.17. Persons holding any real property under an agreement to purchase the same, shall be considered as owners during the time the real property is held or controlled by them as such; provided the agreement to purchase (1) shall have been recorded in the Bureau of Conveyances, and (2) shall provide that the purchasers shall pay the real property taxes levied on the property. Persons holding any real property under a lease for a term to last during the lifetime of the lessee shall be considered as owners during the time the real property is held or controlled by them as such; provided that the lease (1) shall have been duly entered into and recorded in the Bureau of Conveyances or filed in the Office of the Assistant Registrar of the Land Court prior to January 1 preceding the tax year for which the assessment is made, and (2) shall provide that the lessee shall pay all taxes levied on the property during the term of the lease. (Ord. No. 394, July 1, 1981; Ord. No. 713, November 22, 1996)

Sec. 5A-7.2. Imposition Of Real Property Taxes On Reclassification.

A portion of real property taxes shall be imposed upon and paid by the owner or owners thereof when:

(1) The property of the owner has been leased for a term of fifteen (15) years or more.

(2) The classification of the property has been changed to a classification of a higher use during the life of the lease.

(3) The classification to a higher use has occurred without the lessee, who occupies the property, petitioning for such higher classification.

Taxes which are imposed upon the owners of property under this section shall be paid by the owner of such property without being transferred to the lessee who occupies the property and such tax shall be the difference between the assessed valuation of the property after the classification change times the applicable tax rate less the assessed valuation of the property as it existed prior to the classification change times the applicable tax rate. (Ord. No. 394, July 1, 1981)

Sec. 5A-7.3 Assessment Of Property Of Corporations Or Copartnerships.

Property of a corporation or copartnership shall be assessed to it under its corporate or firm name. (Ord. No. 394, July 1, 1981)

Sec. 5A-7.4 Fiduciaries, Liability.

Every personal representative, trustee, guardian, or other fiduciary shall be answerable as such for the

performance of all such acts, matters, or things as are required to be done by this chapter in respect to the assessment of the real property he represents in his fiduciary capacity, and he shall be liable as such fiduciary for the payment of taxes thereon up to the amount of the available property held by him in such capacity, but he shall not be personally liable. He may retain, out of the money or other property which he may hold or which may come to him in his fiduciary capacity, so much as may be necessary to pay the taxes or to recoup himself for the payment thereof, or he may recover the amount thereof paid by him from the beneficiary to whom the property shall have been distributed. (Ord. No. 394, July 1, 1981)

Sec. 5A-7.5 Assessment Of Property Of Unknown Owners.

The taxable property of persons unknown, or some of whom are unknown, shall be assessed to "unknown owners", or to named persons and "unknown owners", as the case may be. The taxable property of persons not having record title thereto on January 1 preceding the tax year for which the assessment is made, or some of whom did not have record title thereto on January 1 preceding the tax year for which the assessment is made, may be assessed to "unknown owners", or to named persons and "unknown owners", as the case may be. Such property may be levied upon for unpaid taxes. (Ord. No. 394, July 1, 1981)

ARTICLE 8. VALUATION, IN GENERAL

Sec. 5A-8.1 Valuation; Considerations In Fixing.

(a) The director shall cause the fair market value of all taxable real property to be determined and annually assessed by the market data and cost approaches to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes, so selected and applied to obtain, as far as possible, uniform and equalized assessments throughout the county; provided that land dedicated pursuant to Secs. 5A-9.1, 5A-9.2 or 5A-9.4 shall be assessed according to those respective sections, and provided further that native forest land and land unusable or unsuitable for any agricultural use shall not be assessed; and provided further that public utilities shall be subject to taxation pursuant to Sec. 5A-8.3. In making such determination and assessment, the director shall separately value and assess, within each class established in accordance with subsection (c) of this section: (1) buildings, and (2) all other real property, exclusive of buildings.

(b) So far as practicable, records shall be compiled and kept which shall show the methods established by or under the authority of the director, for the determination of values.

(c) (1) The land shall be classified into the following general classes:

(A) Single Family Residential
(B) Apartment

(C) Hotel and Resort
(D) Commercial
(E) Industrial
(F) Agricultural
(G) Conservation
(H) Homestead

(2) The director shall assign land to one of the general classes according to its highest and best use, giving major consideration to the districting established by the land use commission pursuant to Chapter 205, H.R.S., the districting established by Kauai county in its general plan and zoning ordinance, use classifications established in the general plan of the State, and such other factors which influence highest and best use, except that parcels which are used for no other purpose than as the owner's principal residence shall be classified as "Homestead" without regard to their respective highest and best use, provided that the owner has applied for and been granted a home exemption according to Section 5A-11.4. The "Homestead" class shall also include parcels used as the owner's principal residence which are being assessed according to their agricultural use as provided in Sec. 5A-9.1, provided that the owner has been granted a home exemption and that no portion of the parcel be used for a purpose other than the owner's principal residence and agriculture. The agricultural use shall be limited to the cultivation of crops, pasturing of animals, and cultivation of aquaculture products, and uses which directly support the agricultural activity such as windbreaks, access roads, irrigation ditches and sheltering of farm machinery. Uses which are primarily commercial or industrial in nature, such as importing, selling, refining or distributing agricultural products, shall not qualify for the Homestead class. The residentially-used portions of agricultural land shall be assessed according to their value in residential use.

(3) When property is subdivided into condominium units, each unit shall be classified upon consideration of its actual use into one of the general classes in the same manner as land.

(4) "Homestead" shall mean properties which are used exclusively as the owner's principal residence. Uses which shall not qualify as "Homestead" include but are not limited to the following:

(A) Land which is used for commercial, income producing purposes, except as provided for in paragraph (2).

(B) Land which is used for residential rental purposes whether for long term or short term.

(d) Whenever land has been divided into lots or parcels as provided by law, each such lot or parcel shall be separately assessed.

(e) A building shall be assessed only if such building is 20% or more complete as of the January 1st assessment date. Any building less than 20% complete as of the January 1st assessment date shall not thereafter be assessed for that tax year under any provisions of this Chapter. To determine whether a building is 20% or more complete, the assessor shall conduct a site inspection, or obtain written documentation from the contractor, or both. The director shall adopt rules pursuant to Chapter 91, Hawaii Revised Statutes, to establish the method for determining whether a building is 20% or more complete and for determining the value of a building under construction which is 20% or more complete.

In determining the value of buildings, consideration shall be given to any additions, alterations, remodeling, modifications, or other new construction, improvement, or repair work undertaken upon or made to existing buildings as the same may result in a higher assessable valuation of the buildings, provided, however, that, any increases in value resulting from any additions, alterations, modifications or other new construction, improvement or repair work to buildings undertaken or made by the owner-occupant thereof pursuant to the requirements of any urban redevelopment, rehabilitation or conservation project under the provisions of Part II, Chapter 53, H.R.S., shall not increase the assessable valuation of any building for a period of seven (7) assessment years.

It is further provided that the owner-occupant shall file with the director in the manner and place which the director may designate, a statement of the details of the improvements certified by the Mayor or any governmental official designated by him and approved by the Council, that the additions, alterations, modifications, or other new construction, improvement or repair work to the buildings were made and satisfactorily comply with the particular urban redevelopment, rehabilitation or conservation act provision.

(f) Assessment of real property subject to a time share plan.

(1) Subject to subparagraph (6) of this subsection (f), the assessed value of each time share unit operating under a time share plan shall be the combined value of the individual time share interests contained in the time share plan.

(2) In assessing real property subject to a time share plan, the director shall look first to the resale market for time share interests.

If by January 1 of each year the director is unable to determine the assessed value of real property subject to a time share plan by looking to the resale market for time share interests, an average price for the time share interests which have been conveyed shall be calculated in accordance with subparagraph (3) of this subsection (f), and the average price shall be multiplied by the total

number of time share interests in the time share unit to determine the assessed value of the unit.

(3) If there is an adequate number of typical resales of time share interests at fair market value to provide a basis for arriving at value conclusions, the provisions of subparagraph (4) of this subsection (f) shall apply. If there is an inadequate number of typical resales of time share interests at fair market value to provide a basis for arriving at value conclusions, then the director shall deduct from the purchase price received by the registered developer in an arm's length transaction "intangible costs" of the time share plan. For purposes of this subsection (f) only, "intangible costs" for real property subject to a time share plan shall include the value of personal property, atypical sales and marketing costs, and costs to provide purchase money financing.

No later than December 31 of any year, the registered developer or plan manager of a time share plan may file with the director either 1) a statement prepared by a certified public accountant certifying the percentage of the purchase price that represents intangible costs of the time share plan, or 2) documentation sufficient to establish the percentage of the purchase price received by the registered developer or plan manager that represents intangible costs of the time share plan.

If the registered developer or plan manager does not file the described statement or documentation by December 31 of any year, "intangible costs" of the time share plan shall be presumed to be fifty percent (50%) of the purchase price received by the registered developer or plan manager; provided that this presumption shall be rebuttable by the registered developer, the plan manager, or any person owning a time share interest under the time share plan. Further, the director may rebut any asserted intangible costs in excess of fifty percent (50%) of the purchase price received by the registered developer or plan manager.

The director shall protect the confidentiality of any proprietary information, trade secrets, or confidential commercial or financial information to the extent permitted by law.

(4) If there is an adequate number of typical resales of time share interests at fair market value to provide a basis for arriving at value conclusions, then for such resales the director shall deduct from the purchase price received by the seller in an arm's length transaction the value of personal property, if any, and atypical sales and marketing costs, if any. Neither the document filing provisions nor the fifty percent rebuttable presumption described in subparagraph (3) of

this subsection (f) shall apply when the director considers the resale value of time share interests.

(5) The provisions of this subsection (f) shall apply to real property subject to either fee or leasehold time share interests.

(6) No time share unit that is registered under a time share plan prior to January 1, 1997 shall be subject to the provisions of this subsection (f) until the first time share interest in such a time share unit is conveyed by the registered developer and recorded in Land Court or the Bureau of Conveyances, as the case may be. Such time share units shall continue to be assessed in the same manner as they were being assessed prior to the effective date of this ordinance. Real property that is registered under a time share plan on or after January 1, 1997 shall be subject to the provisions of this subsection (f) without regard to when the first time share interest is conveyed and recorded by the registered developer.

(7) Where appropriate and as required by the context in which they appear, words and phrases used in this subsection (f) including, but not limited to, "developer", "plan manager", "time share interest", "time share plan", and "time share unit" shall have the meanings ascribed to them by chapter 514E, Haw. Rev. Stat., as amended.

(8) The director may adopt rules pursuant to chapter 91, Haw. Rev. Stat., necessary for the purposes of implementing this subsection (f).

(g) Land leased or held under a revocable permit from the State of Hawaii. Any person who either leases land or holds land under a revocable permit from the State of Hawaii may have his land valued according to this subsection (g) if the requirements of this subsection (g) have been satisfied.

(1) The lessee or permit holder shall file a completed application with the director of finance by September 1 of any year, provided that for the 2000-2001 tax year, a completed application shall be filed by December 31, 1999. The director shall prescribe the form of the application. As part of the application, the lessee or permit holder shall provide:

(A) A legible plot plan or site plan that specifically describes the land area which is in agricultural use;

(B) A legible copy of the executed lease or revocable permit which includes information concerning the term or period of the lease or permit, and the consideration being paid to the State; and

(C) A description of the agricultural use that is occurring on the leased or permitted land.

(2) After receiving the application, the director shall prepare a findings of fact. If the director finds 1) that the applicant has satisfied the

requirements of subparagraph (1) of this subsection (g), and 2) that agricultural use is occurring on the land which is the subject of the application, the director shall approve the application. If the director's finding is adverse to the applicant, the director shall disapprove the application.

(3) Lands described in applications which have been approved by the director shall be given the same agricultural use values as lands dedicated for ten years under Sec. 5A-9.1.

(4) Reporting requirements. Persons whose lands are being valued under this subsection (g) shall immediately file a report in a form prescribed by the director any time they wish to discontinue or have discontinued the agricultural use on any portion of the subject land.

Further, the director may at any time during the term or period of the lease or revocable permit require such persons to submit evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of U.S. Internal Revenue Service Schedule F forms showing profit or loss from farming, filed copies of federal fuel tax exemption claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the activities listed under the definition of the term "agricultural use", and a valid, current, State general excise tax license, in order to verify that the land is in agricultural use.

The director may also, by administrative rule, require lessees or permit holders to submit such other additional information and documents as the director deems necessary to verify that the subject land is in agricultural use.

(5) As used in this paragraph (g), the term "agricultural use" shall have the meaning ascribed to it in Sec. 5A-9.1. (Ord. No. 394, July 1, 1981; Ord. No. 442, December 22, 1982; Ord. No. 464, August 6, 1984; Ord. No. 519, December 9, 1987; Ord. No. 541, May 18, 1988; Ord. No. 579, October 24, 1990; Ord. No. 582, December 27, 1990; Ord. No. 583, March 7, 1991; Ord. No. 596, November 21, 1991; Ord. No. 606, September 23, 1992; Ord. No. 713, November 22, 1996; Ord. No. 742, September 24, 1999; Ord. No. 755, November 30, 2000)

Sec. 5A-8.2 Water Tanks.

Any provision to the contrary notwithstanding, any tank or other storage receptacle required by any government agency to be constructed or installed on any taxable real property before water for home and farm use is supplied, and any other water tank, owned and used by a real property taxpayer for storing water solely for his own domestic use, shall be

exempted in determining and assessing the value of such taxable real property. (Ord. No. 394, July 1, 1981)

Sec. 5A-8.3 Valuation of Public Utilities.

(a) Definitions. As used in this Sec. 5A-8.3:

"gross income" means gross income as defined in Hawaii Revised Statutes chapter 239.

"H.R.S." means Hawaii Revised Statutes, as amended.

"net income" means net income as defined in Hawaii Revised Statutes chapter 239.

"outside plant" means public utility real property, which consists predominantly of production, transmission, collection, switching, and distribution facilities, and which may also consist of one or more of the following items:

(1) Units which have physical and functional characteristics that are so similar that they are accounted for by the public utility as a group or class and are generally installed on easements;

(2) Transmission cable, wire, or pipes, including support or conduit structures;

(3) Substation equipment;

(4) Measuring and regulating equipment;

(5) Generation equipment;

(6) Storage equipment; and

(7) Switching equipment.

"plant", "structure", or "structures" mean public utility real property improvements described in the definition of 'outside plant' in Sec. 5A-8.3(a) and also improvements that are not outside plant, such as buildings, generating stations, production plants, gas compressor stations, boilers, switching plants, dams and reservoirs, circuit equipment, radio systems, terminals, satellite facilities, storage wells, and pumping facilities.

"public utility" means a public utility as defined in Hawaii Revised Statutes Sec. 269-1, except airlines, motor carriers, common carriers by water, and contract carriers subject to taxation under Hawaii Revised Statutes Sec. 239-6.

"State" means the State of Hawaii.

"tax year" shall have the meaning ascribed to it in Sec. 5A-6.2.

(b) Property of public utilities including, but not limited to, outside plant, plant, and structures, shall be subject to real property taxation according to Sec. 5A-8.3.

(c) Notwithstanding any section in chapter 5A, K.C.C. 1987, to the contrary, the director, in determining the fair market value of the real property of public utilities, may use the values for real property, outside plant, plant, and structures set forth in the annual financial reports of the public utilities filed with the Hawaii Public Utilities Commission pursuant to chapter 269, H.R.S., as the basis for the director's assessments.

For purposes of value conclusions, the financial information contained in the public utilities filings with the Hawaii Public Utilities Commission shall be deemed prima facie correct.

Assignment of public utility real property values to individual tax map key numbers shall not be required.

(d) Valuation by assessment.

(1) The fair market value of public utility real property shall be determined as follows:

(A) Land. Public utility land values shall be determined by the market data approach to value using appropriate systematic methods suitable for mass valuation of properties for taxation purposes.

(B) Outside plant, plant, and structures. The value of outside plant, plant, and structures shall be determined on the basis of reproduction cost new less depreciation, if any.

The reproduction cost new shall be determined by multiplying reported inventory original cost by appropriate price indices or by multiplying physical inventories by appropriate unit prices, or both.

The rate of depreciation shall be a function of the appraised property's age, estimated service life, and salvage factor.

(C) Land of public utilities not otherwise classified under Sec. 5A-8.1 shall be classified industrial.

(2) Liens and foreclosures. For purposes of liens and foreclosures, outside plant shall be considered a part of any system or plant of which it is a part, and to which a tax map key has been assigned.

(e) Taxation by percentage of gross income. In lieu of the assessment method specified in Sec. 5A-8.3(c) and (d), a public utility may elect to be assessed, and shall pay, real property taxes of such per cent of its gross income for the preceding year according to this Sec. 5A-8.3(e).

The tax imposed by this Sec. 5A-8.3(e) shall be a means of taxing real property owned by a public utility or leased to it under a lease pursuant to which the public utility is required to pay real property taxes upon the property.

(1) The rate of tax upon the gross income of a public utility shall be determined as follows:

If the ratio of net income of the public utility to its gross income is fifteen percent (15%) or less, the rate of the tax on gross income shall be 1.885 percent (1.885%); for all companies having net income in excess of fifteen percent (15%) of gross income, the rate of the tax on gross income shall increase continuously in proportion to the increase in ratio of net income

to gross income, at such rate that for each increase of one percent (1%) in the ratio of net income to gross income, there shall be an increase of .2675 percent (.2675%) in the rate of the tax.

The following formula may be used to determine the rate, in which formula the term "R" is the ratio of net income to gross income, and "X" is the required rate of the tax on gross income for the utility in question:

$$X = (26.75R - 2.1275)\%;$$

provided that in no case governed by the formula shall "X" be less than 1.885 percent (1.885%) or more than 4.2 percent (4.2%); and provided further that in no case shall the application of the rate or formula described above, when added to the amount of real property tax levied by the other counties using the same formula in their respective county ordinances, result in a combined statewide real property tax liability which is greater than that portion of the tax liability in excess of four percent (4%) that would have been payable by the public utility under H.R.S. chapter 239, as codified on August 1, 2000.

(2) In determining a public utility's gross income and net income under Sec. 5A-8.3(e), the director shall use the gross income and net income information set forth in the reports filed by the public utility pursuant to chapter 239, H.R.S.

If a public utility has not allocated its gross income and net income on a county-by-county basis, a method of allocation shall be agreed to by the director and the public utility.

If the director and the public utility are unable to agree on an appropriate method of allocation, the method shall be determined by the tax appeal court; provided that a tele-communications company that uses access lines may elect to allocate its statewide gross income from its public utility business based on the ratio of the number of the company's access lines in the county to the total number of the company's access lines in the State.

(3) Election or mandatory use of percentage of gross income methodology.

(A) A public utility may elect to subject its real property to taxation pursuant to Sec. 5A-8.3(e), instead of Sec. 5A-8.3(c) and (d), by filing with the director, on a yearly basis, a notice of such election on or before December 31 preceding the tax year for which such an election is made; provided that for the 2001-2002 tax year only, a public utility may file a notice of election on or before June 29, 2001.

The form of the notice shall be prescribed by the director.

(4) A public utility whose real property is subject to taxation under Sec. 5A-8.3(e) shall, notwithstanding any section in chapter 5A, K.C.C. to the contrary, pay real property taxes due for the year in twelve (12) equal monthly installments. The first installment shall be paid on or before July 10th, and the remaining installments shall be paid on or before the tenth day of each month thereafter. All taxes due on an installment payment date that remain unpaid after that date shall thereupon become delinquent. (Ord. No. 755, November 30, 2000)

ARTICLE 9. VALUATION OF DEDICATED LANDS

Sec. 5A-9.1 Dedication of Lands.

(a) Definitions. As used in this section:

"agricultural use" means the use of land on a continuous and regular basis that demonstrates that the owner intends to obtain a monetary profit from cash income received by:

(1) raising, harvesting, and selling crops;

(2) feeding, breeding, managing, and selling of livestock, poultry, or honey bees, or any products thereof;

(3) ranching of livestock;

(4) dairying or selling of dairy products;

(5) animal husbandry, provided that the exclusive husbandry of horses for recreational or hobby purposes shall not be considered an agricultural use under this section;

(6) aquaculture;

(7) horticulture;

(8) participating in a government-funded crop reduction or set-aside program; or

(9) cultivating of trees on land that has been prepared by intensive cultivation and tilling, such as by plowing or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising such trees.

Factors that shall be considered to determine whether an owner intends to obtain a monetary profit from the listed activities include, but are not be limited to, evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of U.S. Internal Revenue Service Schedule F forms showing profit or loss from farming, filed copies of federal fuel tax exemption claims made pursuant to Sec. 6427(c) of the U.S. Internal Revenue Code, sales

receipts generated from the listed activities, a valid, current, State general excise tax license, and covenants, conditions and restrictions encumbering or affecting the property which prohibit or limit agricultural activities.

Physical evidence such as grazing livestock, fences, artificial or natural windbreaks, water facilities, irrigation systems, or crops that are actually in cultivation, or indicia that farm management efforts such as weed control, pruning, plowing, fertilizing, fencing, or pest, insect, or disease control are occurring on the land, shall also be used as factors to determine whether the land is being used for any of the listed activities.

Land areas which are part of a tree farm management plan that was prepared, submitted and is in compliance with K.C.C. Section 5A-11.26 shall be deemed to be in "agricultural use", notwithstanding the fact that said areas are not in cultivation and are yet to be planted. Parcels under 100 acres must be in cultivation or production at the time of the filing of a petition for agricultural dedication. For parcels of one hundred (100) acres or more, a minimum of one hundred acres or at least fifty percent (50%) of the dedicated area, whichever is larger, must be in cultivation or production at the time of filing of the petition to dedicate. Any area that is not in cultivation or production at the time of the filing of a petition to dedicate shall be planted at a rate of 10% per year, each year thereafter, as detailed in a farm management plan to be submitted with the application for agricultural dedication; provided that if the existing tree farm management plan specifies a rate of planting other than 10% per year, the rate of planting specified in the tree farm management plan shall prevail and control.

The term "agricultural use" shall not mean uses primarily as yard space, landscaped open areas, or the raising of livestock or fruit trees primarily for home use.

"owner" means possessors of fee simple estates and lessees and licensees holding leases or licenses whose terms extend for at least ten (10) or twenty (20) years, as the case may be, from the year in which the petition to dedicate is filed.

"parcel" means a subdivided lot or an "apartment" created by the submission of land to a condominium property regime pursuant to the provisions of Haw. Rev. Stat. Chapter 514A.

(b) A special agricultural dedication area is established to enable the owner of any parcel of land within an agricultural district, a rural district, a conservation district, or an urban district to dedicate the land for a specific ranching or other agricultural use and to have his land assessed at its value in such use, provided that if the

land is located within an urban district, or within an agricultural district, a rural district or a conservation district with an area of less than five (5) acres in size, (1) the land dedicated must be used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like; (2) the land dedicated must have been substantially and continuously used for the cultivation of crops such as sugar cane, pineapple, truck crops, orchard crops, ornamental crops, or the like for the five-year period immediately preceding the dedication application, and; (3) the dedication shall be recorded either with the Assistant Registrar of the Land Court or with the Bureau of Conveyances, as the case may be; and provided further that land situated within an agricultural district, which may be further subdivided, may be dedicated for a period of twenty (20) years and shall be taxed at fifty percent (50%) of its assessed value in such use, provided that such dedication is recorded with the Assistant Registrar of the Land Court or the Bureau of Conveyances, as the case may be.

Notwithstanding that a lease or license may be for a term of less than ten or twenty years, a lessee or licensee may dedicate his land for any period of time remaining under his original lease or license if the director determines that the lessee or licensee has satisfied the following conditions:

(1) the lessee or licensee must file a petition to dedicate the leased or licensed land by December 31, 1999;

(2) the term of the lease or license must extend through at least January 1, 2000;

(3) the lease or license must have been executed and in existence by the lessee and lessor or licensee and licensor as of August 12, 1999;

(4) the land must be dedicated only for a time period within the remaining term of the original lease or license; the dedication period shall not encompass any periods which represent renewals or enlargements of, or extensions or additions to, the original term or length of the lease or license; and

(5) the petition must satisfy all requirements of this Sec. 5A-9.1 otherwise relating to petitions to dedicate land to agricultural use including, but not limited to, the requirement that all lessors or licensors have consented to the lease or license, and the requirements relating to the two findings of fact described in paragraph (e) of this Sec. 5A-9.1.

Lands which have been dedicated for any period of time remaining under the original term of a lease or license shall both (1) be given the same agricultural use values as lands dedicated to agricultural use for ten years,

and (2) be subject to all provisions of this Sec. 5A-9.1 relating to ten and twenty year dedications.

(c) If any owner desires to use his land for a specific ranching or other agricultural use and to have his land taxed at its assessed value in this use or fifty percent (50%) of its assessed value, as the case may be, he shall so petition the director and declare in his petition that his land can best be used for the purpose for which he requests permission to dedicate his land, and if his petition is approved, he will use his land for this purpose; provided that, where the owner is a lessee or licensee, the petition shall include i) a legible copy of the executed lease or license for the land being dedicated indicating the consideration being paid by the lessee or licensee, and ii) notarized signatures of all lessors or licensors, as the case may be, evidencing that they have consented to the application to dedicate under the terms and conditions of this section 5A-9.1.

(d) If the owner desires to change from one specific ranching or other agricultural use to another ranching or other agricultural use, the owner shall so petition the director of finance and declare in the petition that:

(1) the owner's land can best be used for a ranching or other agricultural purpose other than that for which the owner originally requested permission; and

(2) the owner will use the land for that new purpose if the owner's petition is approved.

(e) Upon receipt of a petition as provided above in subsections (c) and (d), the director shall make a finding of fact as to whether the land in the petitioned area is reasonably well suited for the intended use. The finding shall include and be based upon the productivity ratings of the land in those uses for which it is best suited, a study of the ownership, size of the operating unit, the present use of surrounding similar lands, and other criteria as the director may deem appropriate.

The director shall also make a finding of fact as to whether the intended use is in conflict with the development plan of the district in which the land is situated or the overall development plan of the State. If both findings are favorable to the owner, the director shall approve the petition and declare that the owner's land is dedicated land; provided, that for lands in urban districts, the director shall make further findings respecting the economic feasibility of the intended use of the land. If all three findings are favorable, the director shall approve the petition and declare the land to be dedicated. In order to place prospective buyers on notice of the roll back liability, the petitioner shall within thirty (30) days of notice of approval record the dedication in accordance with the procedures of the Bureau of Conveyances or the Assistant Registrar of the Land Court of the State of Hawaii, as the case may be. After December 31, 2003, only properties with dedications recorded in accordance with the procedures of the

said Bureau of Conveyances or Land Court, as the case may be, shall receive assessments based on their dedicated uses as follows:

(f) The approval by the director of the petition to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his land to a use other than agricultural use for a minimum period of ten (10) years or twenty (20) years, as the case may be, subject to cancellation as follows:

(1) At the end of its initial ten or twenty-year period, each dedication shall terminate. After the ninth or the nineteenth years of a ten-year or a twenty-year dedication, as the case may be, the owner may apply to dedicate his lands under the ordinance, rules and regulations that are in force at the time the application for dedication is received by the director. The application for dedication shall be treated as a new dedication.

(2) Upon any conveyance or change in ownership during the period of dedication subject to State conveyance tax pursuant to Haw. Rev. Stat. Chapter 247, the dedication shall be cancelled, unless the new owner shall, in writing, assume the dedication for the remainder of the dedication period.

(3) In the case of a change in major land use classification not as a result of a petition by any property owner or lessee such that the owner's land is placed within an urban district, the owner may cancel the dedication within sixty (60) days of the change.

(4) In the case where the owner intends to convey or lease dedicated land for nominal consideration to a non-profit entity to be used for non-profit purposes, the owner may petition the director for a thirty-six (36) month transition period to the non-profit use on or before December 31. If at the end of the thirty-six (36) month transition period the land meets all the requirements for exemption under Section 5A-11.10, the dedication on that land shall be canceled. Upon request, the director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.

(5) In the case where subdivision of the land or submission of the land to a condominium property regime results in one or more subdivided parcels of land or "apartments", as defined in Haw. Rev. Stat. Chapter 514A, of less than five (5) acres.

No later than July 1 of the last year of any ten and twenty-year dedication, the director shall mail to the owner, at the owner's last known address, written notice that the property under dedication shall cease to be dedicated after December 31 of the last year of that ten or twenty-year dedication unless the owner petitions to re-dedicate the

property to agricultural use and the petition is approved by the director.

(g) The director may, at any time while the land is dedicated to agricultural use, require owners to submit evidence that the land enjoys County Department of Water agricultural water rates, filed copies from the immediate preceding year of Schedule F forms submitted to the U.S. Internal Revenue Service, filed copies of claims for exemption from federal income taxation made under Sec. 6427(c) of the U.S. Internal Revenue Code, sales receipts generated from the activities listed under the definition of the term "agricultural use", and a valid, current, State general excise tax license, in order to verify that the land is in agricultural use. Also at any time during the dedication period, the director may require owners to submit such other additional information and documents as the director may deem necessary to verify that the dedicated land is in agricultural use. Any such requirements shall be established by administrative rule adopted pursuant to Chapter 91, Haw. Rev. Stat.

(h) Failure of the owner to keep his land in agricultural use shall cancel the dedication and special tax assessment privilege retroactive to the date of the dedication, but in any event, shall not exceed the term of the original dedication, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent (10%) a year penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, shall be a paramount lien upon the property pursuant to Sec. 5A-5.1.

(1) Failure to keep his land in agricultural use means either 1) failure to keep the land in agricultural use for a period of twelve (12) consecutive months, or 2) the overt act, for any period of time, of changing the agricultural use to either an unapproved agricultural use or a non agricultural use; provided that the following events shall not constitute either a failure by the owner to keep his land in agricultural use or an overt act of changing the agricultural use:

(A) a change in land use classification upon petition by the owner of such dedicated lands, or

(B) the petition by the owner for a change in use as provided in subsection (d) and the owner's subsequent change in use of such dedicated lands, or

(C) the declaration by the owner of an intent to change the use of the land to a non-profit use according to subsection (f)(4) and the owner's subsequent change in use of such dedicated lands.

(2) If an owner is permitted to change his use as provided in subsection (d) and (e), he shall be allowed

up to twelve (12) months for parcels up to and including fifty (50) acres in size and twenty-four months for parcels over fifty (50) acres in size, from the date of the approval of his petition to convert to the new ranching or agricultural use. If the owner fails to make the conversion within the specified time limit he will be subject to the taxes and penalties provided above. For purposes of assessment of taxes and penalties, the conversion period shall be considered in addition to the specified dedication period, except, however, in the case of leased lands whose term expires prior to or in conjunction with the end of the dedication period, the conversion period shall be considered as a part of the dedication period. The petitioner shall submit progress reports of his efforts in converting from one agricultural use to another agricultural use to the director of finance by the anniversary date of the petition approval and yearly, thereafter, as long as such conversion period remains.

(3) If an owner has declared an intention to convey or lease the dedicated land to a non-profit entity to be used for non-profit purposes as provided in subsection (f)(4), there shall be allowed thirty-six (36) months from the effective date of the declaration to complete the change to a non-profit use. If the land does not meet the requirements for exemption under Sec. 5A-11.10 after the thirty-six (36) month transition period, the owner shall be subject to the taxes and penalties provided above. Upon request, the director may extend the thirty-six (36) month transition period due to delays beyond the control of the owner or non-profit entity.

Any other provisions to the contrary notwithstanding, when a portion of the dedicated land is subsequently applied to a use other than the use set forth in the original petition, only such portion as is withdrawn from agricultural use and applied to a use other than ranching or another agricultural use shall be taxed as provided by this subsection.

(i) Cancellation without rollback taxes and penalties. Notwithstanding any provision in this section 5A-9.1 to the contrary, the occurrence of any of the following events shall cause the dedication to be canceled without the imposition of any roll back taxes or penalties whatsoever:

(1) The death of the owner; or

(2) Events beyond the owner's control make it unfeasible to continue the agricultural use of the dedicated parcel including, but not limited to:

(A) A serious or debilitating long-term illness or injury suffered by the owner;

(B) A natural disaster such as a windstorm, flood, disease, or infestation which destroys the crop or livestock on the dedicated parcel; or

(C) The taking of the dedicated parcel or any portion thereof by a governmental entity, provided that where only a portion of the parcel is taken, the cancellation shall be effective only as to the portion taken.

(j) The director shall prescribe the form of the petition. In all cases, a separate petition shall be required for each individual parcel or apartment of a condominium property regime. The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15. If approved, the assessment, based upon the use requested in the dedication, shall be effective on January 1 of the following year.

(k) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(l) A special land reserve is established to enable the owner of any parcel of land within an urban district to dedicate his land for a specific livestock use such as feed lots, calf-raising and like operations in dairy, beef, swine, poultry and aquaculture, but excluding grazing or pasturing, and to have his land assessed at its value in such use; provided that (1) the land dedicated must be used for livestock uses such as feed lots, calf-raising, and like operations in dairy, beef, swine, poultry and aquaculture but excluding grazing or pasturing; (2) the land dedicated must have been substantially and continuously used in the livestock uses enumerated in (1) hereinabove; and (3) such livestock use must be compatible with the surrounding uses.

(m) Rules of construction. The following rules of construction shall apply to this section 5A-9.1.

(1) Number and gender. Words in the masculine gender shall signify both the masculine and feminine gender, and also refer to corporations, partnerships, firms, and other business entities. Words in the singular or plural number shall signify both the singular and plural number.

(2) "Month", "year", "day." Unless otherwise specified, the word "month" means a calendar month, the word "year" means a calendar year, and the word "day" means a calendar day.

(3) Words to have their usual meaning. Except as defined in this section 5A-9.5, the words of this section are generally to be understood in their most known and usual significance, without attending so much to their literal and strictly grammatical construction, as to their general or popular use or meaning.

(4) Construction of ambiguous context. Where words in this section are ambiguous:

(A) The meaning of the ambiguous words may be sought by examining the context with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning;

(B) The reason and spirit of the law, and the cause which induced the council to enact it, may be considered to discover their true meaning; and

(C) Every interpretation which leads to an absurdity shall be rejected. (Ord. No. 394, July 1, 1981; Ord. No. 457, April 25, 1984; Ord. No. 464, August 6, 1984; Ord. No. 520, December 9, 1987; Ord. No. 679, March 28, 1995; Ord. No. 741, September 24, 1999; Ord. No. 781, December 10, 2001)

Sec. 5A-9.2 Golf Course Assessment.

(a) Land operated and used as a golf course shall be assessed for property tax purposes on the following basis:

The value to be assessed by the director shall be on the basis of its actual use as a golf course rather than on the valuation based on the highest and best use of the land.

In determining the value of actual use, the factors to be considered shall include, among others, rental income, cost of development, sales price and the effect of the value of the golf course on the value of the surrounding lands.

(b) In order to qualify in having land assessed in valuation as a golf course, the owner of any parcel of land desiring or presently using his land for a golf course shall, as a condition precedent, qualify as follows:

(1) Dedication of Land.

(A) The owner of any parcel of land for a golf course shall petition the director and declare in his petition that he will dedicate his parcel of land for a golf course.

(B) The approval by the director of the petition to dedicate the land shall constitute a forfeiture on the part of the owner of any right to change the use of the land for a minimum period of ten (10) years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five years' notice at any time.

(C) The failure of the owner to observe the restrictions on the use of his land to that of a golf course shall cancel the special tax assessment privilege retroactive to the date of the dedication but not more than ten (10) years prior to the tax year in which the exemption is disallowed; and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall

be payable with a six percent a year penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve (12) consecutive months to use the land in that manner requested in the petition as a golf course by the overt act of changing the use for any period. Nothing in this paragraph shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land as a golf course.

(D) The director shall prescribe the form of the petition. The petition shall be filed by September 1 of any calendar year and shall be approved or disapproved by December 15 of such year. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1 of the succeeding year.

(E) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(F) The term "owner", as used in this section, includes lessees of real property whose lease term extends at least ten (10) years effective from the date of the petition.

(G) The amount of additional taxes due and owing where the owner has failed to observe the restriction on the use shall attach to the property as a paramount lien in favor of the County as provided in Section 5A-5.1.

(2) Covenant not to engage in discrimination.

The owner shall covenant in his petition with the director that he will not discriminate against any individual in the use of the golf course facilities because of the individual's race, sex, religion, color or ancestry. (Ord. No. 394, July 1, 1981; Ord. No. 521, December 9, 1987)

Sec. 5A-9.3 Dedication of Home Exemption Property to Permanent Home Use.

(a) Any owner who has a home exemption under Sec. 5A-11.4, K.C.C. 1987, is hereby enrolled in the dedication of home exemption property to permanent home use and shall have their property taxed as provided in subsection 5A-9.3(f).

(b) Any owner with a home exemption who desires not to be enrolled in the dedication of home exemption property to permanent home use shall inform the director on forms provided by the director, by December 31, 2003. In the case of multiple owners, all owners are required to sign the form.

(c) The director shall note on the notice of assessment or tax bill, or both, that the property is dedicated to permanent home use, and the termination date of the dedication.

(d) Notwithstanding any provision in this Sec. 5A-9.3 to the contrary, any owner may cancel his or her dedication under this Sec. 5A-9.3 for any reason and at any time without the imposition of any rollback taxes, penalties, and interest whatsoever.

(e) Notwithstanding any other provision to the contrary, the sale or change in use of a dedicated property shall not constitute a breach under this section and shall not result in the imposition of any rollback taxes, penalties and interest whatsoever.

(f) Home exemption property dedicated to permanent home use shall be taxed in the following manner:

(1) The taxes on the dedicated property in the first year of the dedication shall be increased only as provided in Sec. 5A-9.3(f)(2).

(2) The dedicated property shall be taxed based on its assessed value, provided that any increase in taxes shall not exceed six (6) per cent a year, except as provided below:

(A) If any improvements are undertaken on the dedicated property, and such improvements increase the fair market value of the dedicated property, the taxes shall be increased based on the fair market value of the improvements undertaken plus up to six (6) per cent a year if appropriate, except as follows:

(1) If property is damaged by fire, wave, earthquake, flood, wind, natural disaster, or accident, any increase in taxes due to repairs or reconstruction shall be limited to six percent (6%) per year over the taxes for the tax year following the last assessment of the undamaged property.

(2) If the size of the existing floor area (exclusive of garages, carports, and porches) is increased, the taxes attributable to the additional floor area shall not be limited.

(B) If omitted improvements are added to the rolls, the taxes shall be increased based on the fair market value of the omitted improvements, plus up to six (6) per cent a year if appropriate.

(C) If home exemption property dedicated herein subsequently increases in assessed value due solely to actions of the owner in changing use within the property itself, such as but not limited to, change in the agricultural use or the number of homesites, or breach or expiration of other dedication, the taxes shall be increased by the full amount due to such change in use, plus up to six (6) per cent a year if appropriate.

(D) If the amount of the exemption for which the property is eligible changes, the taxes shall be increased by the amount attributable to the change in the exemption, if any, plus up to six per cent a year if appropriate.

(E) If there is a clerical error in any year's assessment the correction of which is not permitted under the terms of Section 5A-1.19, the taxes for the next year shall be based on what the taxes would have been for the previous year without the clerical error.

(3) In the case of multi-use parcels or structures, only those portions which receive the home exemption can be dedicated and receive the limit on tax increases.

If the portion of the property which is eligible for a home exemption is increased or decreased, the dedicated area shall be adjusted accordingly. The adjustment shall not change the term of the dedication. A partial loss of home exemption shall not be a breach.

(g) The Director shall apply either the Circuit Breaker (Bill No. 2079, Draft 1) or Dedication, whichever provides the greatest relief to the owner. (Ord. No. 571, July 16, 1990; Ord. No. 591, September 17, 1991; Ord. No. 600, December 20, 1991; Ord. No. 645, December 17, 1993; Ord. No. 680, March 28, 1995; Ord. No. 780, December 10, 2001; Ord. No. 806, October 1, 2003)

Sec. 5A-9.4 Certain Lands Dedicated For Residential Use.

(a) The term "owner", as used in this section, means a person who is the fee simple owner of real property, or who is the lessee of real property whose lease term extends at least ten (10) years from the date of the petition.

(b) A special land reserve is established to enable the owner of any parcel of land within a hotel, apartment, resort, commercial, or industrial district to dedicate his land for residential use and to have his land assessed at its value in residential use; provided that (1) the land dedicated shall be limited to a parcel used only for single family dwelling residential use; (2) the owner of the land dedicated shall use it as his home; and (3) not more than

one (1) parcel of land shall be dedicated for residential use by any owner.

(c) If any owner desires to use his land for residential use and to have his land assessed at its value in this use, he shall so petition the director and declare in his petition that if his petition is approved, he will use his land for single family dwelling residential use only and that his land so dedicated will be used as his home.

Upon receipt of any such petition, the director shall make a finding of fact as to whether the land described in the petition is being used by the owner for single family dwelling residential use only and as his home. If the finding is favorable to the owner, the director shall prepare a notice of dedication and deliver it to the owner along with the notice of approval. The owner shall execute and record the notice of dedication with the Bureau of Conveyances of the Department of Land and Natural Resources so that prospective buyers will be put on notice as to the penalties which may come due upon sale of the property. The dedication shall take effect on January 1 of the calendar year following the year of application; provided that if the director does not receive a recorded copy of the notice of dedication within 45 days of the date of approval, the exemption shall be canceled and the dedication approval shall be rescinded.

(d) The approval of the petition by the director to dedicate shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten (10) years, automatically renewable thereafter for additional periods of ten (10) years, subject to cancellation by either the owner or the director.

(e) Failure of the owner to observe the restrictions on the use of his land or the sale of the property shall cancel the special tax assessment privilege retroactive to the date of the dedication or the latest renewal ten-year period, and all differences in the amount of taxes that were paid and those that would have been due from assessment in the higher use shall be payable with a ten percent (10%) per year penalty from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve (12) consecutive months to use the land in the manner requested in the petition or the overt act of changing the use for any period, or the sale of the real property. Nothing in this subsection shall preclude the County from pursuing any other remedy to enforce the covenant on the use of the land.

The additional taxes and penalties, due and owing as a result of failure to use or any other breach of dedication, shall be a paramount lien upon the property pursuant to Sec. 5A-5.1.

(f) The director shall prescribe the form of the petition and the notice of dedication. The petition shall be filed with the director by September 1 of any calendar year and shall be approved, conditional upon recordation as

prescribed is subsection (c), or disapproved by December 15. If approved, the assessment based upon the use requested in the dedication shall be effective on January 1 of the next calendar year.

(g) The owner may appeal any disapproved petition as in the case of an appeal from an assessment. (Ord. No. 394, July 1, 1981; Ord. No. 637, October 14, 1993)

ARTICLE 10. VALUATION OF WASTELAND

Sec. 5A-10.1 Definitions.

When used in this Article:

(1) "Wasteland" means land which is classified as such by the director.

(2) The term "owner" shall include any person leasing the real property of another under a lease having a stated term of not less than thirty (30) years. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.2 Eligibility.

Any property of not less than twenty-five (25) acres in area is eligible for classification as wasteland development property if it meets the classification requirements of wasteland property as established by the director. No real property under a lease having an unexpired term of less than thirty years shall be eligible for classification as wasteland development property. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.3 Application.

The owner of any property may apply to the director for classification of his land as wasteland development property. The application shall include a description of the property, the manner in which the property will be developed, and such additional information as may be required by the director. The application shall state that all persons having any interest in or holding any encumbrance upon the property have joined in making the application and that all of them will comply with the laws and regulations relating to the use, building requirements, and development of the real property. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.4 Classification.

Within four (4) months after the filing of the application with the director, the director shall make a finding of fact as to the eligibility of such land for classification as wasteland development property, whether it can be developed in the manner specified by the owner, whether the development will add to the development of the economy of the County and whether the development will broaden the tax base of the County. The determination shall be based upon all available information on soils, climate, land use trends, watershed values, present use of surrounding similar lands, and other criteria as may be appropriate.

Upon the finding by the director that the property is eligible for classification as wasteland development property; that it can be developed in the manner specified by the owner; that the development will add to the economy

of the County; and that it will broaden the tax base of the County, the property shall be classified as wasteland development property. If the director finds it otherwise for any one of the above criteria, the application shall be disapproved.

The applicant may appeal any disapproved application as in the case of an appeal from an assessment.

Land classified as wasteland development property shall be administered by the director and the director may, from time to time, make rules and regulations for their administration pursuant to the provisions of Chapter 91, H.R.S. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.5 Development And Maintenance Of Wasteland Development Property.

Within one year following the approval of the application, the owner shall develop that portion of his land as specified in his application and as approved by the director. Additional areas shall be developed each year as prescribed by the director. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.6 Special Tax Assessment.

Any property classified as wasteland development property by the director shall be, for a period of five (5) years, assessed for real property tax purposes at its value as wasteland. The five-year period shall commence from January 1 of the year following the approval of the application. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.7 Declassification.

Thirty (30) days after notification to the owner by the director for noncompliance of any law, ordinance, rule, or regulation, the director may declassify any land classified as wasteland development property. The director shall notify the owner of the declassification and in that event, the director shall cancel the special tax assessment provided in Sec. 5A-10.6 retroactive to the date that the property qualified for special tax assessment and the difference between the real property taxes that would have become due and payable but for such classification for all the years the land was classified as wasteland development property and the real property taxes paid by the owner during such period shall become immediately due and payable together with a five per cent (5%) a year penalty from the respective dates that such additional tax would otherwise have been due. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.8 Appeals.

Any person aggrieved by the additional assessment for any year may appeal from such assessment in the manner provided in the case of real property tax appeals. (Ord. No. 394, July 1, 1981)

Sec. 5A-10.9 Nontaxable Property.

For purposes of accountability, the director shall assess at the nominal sum of $1 each parcel of real property which is completely exempt from taxation. (Ord. No. 394, July 1, 1981; Ord. No. 522, December 9, 1987)

ARTICLE 11. EXEMPTIONS

Sec. 5A-11.1 Claims For Certain Exemptions.

(a) None of the exemptions from taxation granted in Sections 5A-11.4, 5A-11.6 to 5A-11.11, 5A-11.24, and 5A-11.27 shall be allowed in any case, unless the claimant shall have filed with the Department of Finance, on or before December 31 preceding the tax year for which such exemption is claimed, a claim for exemption in such form as shall be prescribed by the department.

(b) A claim for exemption once allowed shall have continuing effect until:

(1) The exemption is disallowed;

(2) The director voids the claim after first giving notice (either to the claimant or to all claimants in the manner provided by either Sec. 5A-2.1 or Sec. 5A-1.14, as the case may be) that the claim or claims on file will be voided on a certain date, not less than thirty (30) days after such notice;

(3) The five-year period for exemption, as allowed in Sec. 5A-11.11, expires; or

(4) The claimant makes the report required by subsection (d).

(c) A claimant may file a claim for exemption even though there is on file and in effect a claim covering the same premises, or a claim previously filed and disallowed or otherwise voided. However, no such claim shall be filed if it is identical with one already on file and having continuing effect. The report required by subsection (d) may be accompanied by or combined with a new claim.

(d) Any person who has been allowed an exemption under Sections 5A-11.4, 5A-11.5 to 5A-11.11 or 5A-11.24 has a duty to report to the assessor within thirty (30) days after he ceases to qualify for such an exemption for one of, but not limited to, the following reasons:

(1) He ceases to be the owner, lessee, or purchaser of the exempt premises;

(2) A change in the facts previously reported has occurred concerning the occupation, use, or renting of the premises, buildings or other improvements thereon; or

(3) Some other change in status has occurred which affects his exemption.

Such report shall have the effect of voiding the claim for exemption previously filed, as provided in subsection (b)(4). The report shall be sufficient if it identifies the

property involved, states the change in facts or status, and requests that the claim for exemption previously filed be voided.

In the event the property comes into the hands of a fiduciary who is answerable as provided for by this chapter, the fiduciary shall make the report required by this subsection within thirty (30) days after his assumption of his fiduciary duties or within the time otherwise required, whichever is later.

Any person who has a duty of making a report as required by this subsection, who, within the time required, fails to make a report, shall be liable for a civil penalty. The amount of the penalty shall be the lesser of: (A) $200 for each year that the change in facts remain unreported; or (B) the amount of the taxes due for the property computed without the claim for exemption as of January 1 of the year in which the report was due. In addition to this penalty, the taxes due on the property plus any additional penalties and interest thereon shall be collected as property taxes and shall be a lien on the property as provided for by this chapter.

(e) If the director is of the view that, for any year the exemption should not be allowed, in whole or in part, the director may, at any time within five (5) years of January 1 of that year, disallow the exemption for that year, in whole or in part, and may add to the assessment list for that year the amount of value involved, in the manner provided by Sec. 5A-3.4 for the assessment of omitted property; provided, that if an assessment or addition under this subsection is made after April 9 preceding the tax year, the taxes on the amount of value involved in the assessment or addition so made shall be made a lien as provided for by ordinance by recording a certificate setting forth the amount of tax involved, penalties, and interest.

(f) In any case of recordation of a certificate for the amount of the civil penalty under subsection (d), or for the amount of tax, penalties, and interest assessed or added under subsection (e), a person shall be deemed to have an interest arising before the recordation of the certificate only if and to the extent that he acquired his interest in good faith and for a valuable consideration without notice of a violation of the requirements of subsection (d) having occurred. (Ord. No. 394, July 1, 1981; Ord. No. 509, November 23, 1987; Ord. No. 544, July 18, 1988)

Sec. 5A-11.2 Rules And Regulations.

The director may promulgate rules and regulations as may be necessary to administer Sections 5A-11.3 to 5A-11.17. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.3 Assignment Of Partial Exemptions.

Unless otherwise specifically provided, allowable exemptions shall be applied first to the value of the buildings on the land and the remainder of the unused exemption, if any, to the value of the land. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.4 Homes.

(a) Real property owned and occupied only as the taxpayer's principal home, as of the date of assessment by any individual or individuals, shall be exempt only to the following extent from property taxes:

(1) Totally exempt where the value of the property is not in excess of $48,000;

(2) Where the value of such property is in excess of $48,000, the exemption shall be the amount of $48,000. Provided:

(A) That no such exemption shall be allowed to any corporation, copartnership, or company;

(B) That the exemption shall not be allowed on more than one home for any one taxpayer;

(C) That where the taxpayer has acquired the taxpayer's home by a deed made on or after July 1, 1951, the deed shall have been recorded on or before December 31 immediately preceding the year for which the exemption is claimed;

(D) That a husband and wife shall not be permitted exemption of separate homes owned by each of them, unless they are living separate and apart, in which case they shall be entitled to one exemption, to be apportioned between each of their respective homes in proportion to the value thereof; and

(E) That a person living on premises, a portion of which is used for commercial purposes, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion thereof used exclusively as a home.

(3) The home exemption amount shall be reviewed every three years beginning in 2004 by the Director, who shall, by the end of the 2004 calendar year, make a recommendation to the County Council of any adjustment to the amount based on statistical data obtained through federal and state agencies that compile information such as wage rate data and consumer price index statistics.

(b) Where two or more individuals jointly, by the entirety, or in common, own or lease land on which their homes are located, each home, if otherwise qualified for the exemption granted by this section, shall receive the exemption. If a portion of land held jointly, by the entirety, or in common by two or more individuals, is not qualified to receive an exemption, such disqualification shall not affect the eligibility for an exemption or exemptions of the remaining portion.

(c) A taxpayer who is sixty (60) years of age or over and who qualifies under subsection (a) shall be entitled to one of the following multiples of home exemption:

Age of Taxpayer	Multiple to be Used in Computing Home Exemption Amount
60 years of age or over but not 70 years of age or over.....	2.0
70 years of age or over.....	2.5

For the purpose of this subsection, a husband and wife who own property jointly, by the entirety, or in common, on which a home exemption under the provisions of subsection (a) has been granted, shall be entitled to the applicable multiple of home exemption set forth above when at least one of the spouses qualifies each year for the applicable multiple of home exemption.

(d) Real property which qualifies for a homeowner's exemption under this section shall be entitled to an additional exemption not to exceed $55,000, provided that the annual income of the owner-occupant is less than $40,000. The annual income threshold shall be reviewed every three years beginning in 2004 by the Director, who shall, by the end of the 2004 calendar year, make a recommendation to the County Council of any adjustment to the threshold based on statistical data obtained through federal and state agencies that compile information such as wage rate data and consumer price index statistics. The amount of the exemption is to be determined in the manner set forth in subsection (a) of this section.

(1) For the purposes of this subsection, the following definitions shall apply:

"Income" shall mean either the sum of federal adjusted gross income as defined in the Internal Revenue Code of the United States of 1954, as amended, or the sum of Hawaii adjusted gross income as defined in Chapter 235, Hawaii Revised Statutes as amended, whichever is greater.

"Owner-occupant" shall mean all persons living in the dwelling to be exempted under this section who are owners of that dwelling as defined in Section 5A-7.1, provided that in cases where husband and wife both occupy the dwelling but only one spouse is an owner, the income of both spouses shall be considered in determining eligibility under this section.

(2) Income from the calendar year preceding the year in which the application is filed shall be the basis for qualification under this subsection. (The initial application shall be filed on or before September 1, 1990. The additional home exemption shall be applied to the assessed valuation as of January 1, 1991, affecting the tax payments due in August 1991 and February 1992. This timetable shall be followed for all future applications.)

(3) The additional home exemption shall be valid for one (1) tax year and it shall be the responsibility of the property owner to annually file an application for the additional home exemption on or before September 1 immediately preceding the year for which the exemption is claimed.

Real Property assessed as of January 1, 2003 only shall be entitled to an exemption under Sec. 5A-11.4(d) if the annual income of the owner-occupant did not exceed $40,000 for calendar year 2000 and the owner-occupant files for this exemption by July 1, 2002. This exemption shall be in addition to any exemption that the property may be entitled to under Sec. 5A-11.4 based on the owner-occupant's annual income for calendar year 2001. Real property assessed as of January 1, 2002 that has already received an exemption under Sec. 5A-11.4(d) shall not be entitled to a second exemption under that section.

In the event that an owner-occupant who has been granted an additional exemption under this subsection changes his principal residence prior to January 1 following his application, the additional exemption may be transferred to the new property, provided that he has been granted a home exemption for the new property for the year following the date of application.

(4) The director shall prescribe appropriate forms for applications and require proof of income which shall include, but is not limited to the following:

(A) A copy of the portion of the state personal income tax returns or records for all owner-occupants which set forth their state adjusted gross income, and

(B) A copy of the portion of the federal personal income tax returns for all owner-occupants which set forth their federal adjusted gross income.

In the event that any of the owner-occupants were not required to file an income tax return pursuant to the Internal Revenue Code of the United States of 1954, as amended, or Hawaii Revised Statutes, Chapter 235, as amended, the owner-occupant shall sign an affidavit stating the reason he was not required to file, and attesting to the amount of income received. The applicant may refuse to provide such proof or any additional information requested by the director, but upon such refusal, the director may deny the application and there shall be no appeal from such a denial.

The application form, which shall be signed by the owner-occupant(s), shall contain authorization to the state department of taxation for release to the county finance director, a certified copy of the income tax records showing adjusted gross income. The finance director shall annually obtain such certified state

income tax records from the state department of taxation for at least one per cent of the number of properties with additional home exemptions, and verify the certified income tax record copy with the application. The properties which are verified shall be randomly selected, provided nothing in this section shall preclude the finance director from obtaining a certified copy of an income tax record in cases whenever circumstances warrant.

(5) The director shall determine eligibility for the additional home exemption upon review and verification of each application. The director shall notify each applicant whose application has been denied of such denial and the reasons for ineligibility on or before March 15 preceding the tax year.

(6) In addition to any penalty provision set forth in Article 11, any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the department of finance, shall be fined $1,000 or imprisoned for not more than one year or both.

(e) Circuit breaker credit.

(1) For purposes of this section:

"Homeowner" means a person who filed and was granted a home exemption claim under Section 5A-11.4 Homes prior to December 31, 2003.

"Homeowner property" means the property with regard to which a homeowner filed and was granted a home exemption claim under Section 5A-11.4.

"Household" refers to an owner-occupant as defined in Section 5A-11.4(d)(1).

"Household income" means the total income of a household for tax year 2002.

"Income" means the sum of Federal adjusted gross income as defined by the Internal Revenue Code of 1986, as amended, or the sum of Hawaii adjusted gross income, as defined in Chapter 235 of Hawaii Revised Statutes, as amended, whichever is greater.

(2) Upon proper application, a homeowner shall be entitled to a credit in the amount that the real property tax assessed on the homeowner property for 2003 exceeds three percent of the household income. In no event shall the real property tax due after the application of the credit be less than the 2001 taxes assessed on the property. For properties which have new construction or have had changes in land use or exemption, the taxes after the application of the credit shall not be less than what the tax would have been in 2001.

The credit shall be applied in equal pro rata amounts against each payment due for the next tax year following the year in which an application for credit is submitted and granted. No credit shall be applied if taxes on the property are delinquent.

(3) No credit shall be granted pursuant to this section unless an application for credit, notarized affidavit, and proof of income is filed with the Department of Finance. Proof of income shall include a copy of the portion of the 2002 Hawaii State personal income tax returns for all owner-occupants, which sets forth their Hawaii State adjusted gross income, and a copy of the portion of the 2002 Federal personal income tax returns for all owner-occupants, which sets forth their Federal adjusted gross income. Applications shall be submitted in a form prescribed by the Director of Finance as follows:

- For the fiscal year beginning July 1, 2004, the period for applications shall end on December 31, 2003.

(4) Credits granted pursuant to this section shall not be transferable to other persons or properties.

(5) The director may adopt rules and prescribe forms to implement this section.

(6) Expiration. Subsection (e) is hereby repealed after December 31, 2004.

(f) In addition to any penalty provision set forth in Article 11, any person who files a fraudulent application or attests to any false statement, with intent to defraud or to evade the payment of taxes or any part thereof, or who in any manner intentionally deceives or attempts to deceive the department of finance, shall be fined $1,000 or imprisoned for not more than one year or both. (Ord. No. 394, July 1, 1981; Ord. No. 420, January 1, 1983; Ord. No. 561, December 27, 1989; Ord. No. 572, July 16, 1990; Ord. No. 584, March 12, 1991; Ord. No. 603, April 20, 1992; Ord. No. 779, December 10, 2001; Ord. No. 784, May 13, 2002; Ord. No. 789, August 26, 2002; Ord. No. 799, December 23, 2002; Ord. No. 805, September 19, 2003)

Sec. 5A-11.5 Home, Lease, Lessees Defined.

For the purpose of Sec. 5A-11.4, the word "home" includes:

(1) The entire homestead when it is occupied by the taxpayer as such;

(2) A residential building on land held by the lessee or his successor in interest under a lease for a term of five (5) years or more for residential purposes and owned and used as a residence by the lessee or his successor in interest, where the lease and any extension, renewal, assignment or agreement to assign the lease, have been duly entered into and recorded prior to January 1 preceding the tax year for which the exemption is claimed and whereby the lessee agrees to pay all taxes during the term of the lease;

(3) An apartment which is a living unit (held under a proprietary lease by the tenant thereof) in a multi-unit residential building on land held by a cooperative apartment corporation (of which the proprietary lessee of such living unit is a stockholder)

under a lease for a term of five (5) years or more for residential purposes and which apartment is used as a residence by the lessee-stockholder, where the lease and any extension or renewal have been duly entered into and recorded prior to January 1 preceding the tax year for which the exemption is claimed, and whereby the lessee-stockholder agrees to pay all taxes during the term of the lease provided that:

(A) The exemption shall not be allowed in respect to any cooperative apartment unit where the owner of the cooperative apartment unit claims exemption on a home or other cooperative apartment unit; and

(B) The owner or owners of a cooperative apartment building or premises shall not be permitted exemptions where a husband and wife owner of a cooperative apartment unit own separate cooperative apartment units or separate homes owned by each of them, unless they are living separate and apart, in which case the owner of the cooperative apartment or premises shall be entitled to one-half (1/2) of one exemption.

(4) An apartment in a multi-unit apartment building which is occupied by the owner of the entire apartment building as his residence, provided that:

(A) The exemption shall not be allowed in respect to any apartment owner who claims any other home exemption; and

(B) A husband or wife owner of the aforementioned type of apartment shall not be allowed a full exemption where the husband and wife are living separate and apart and each is maintaining an apartment or home entitled to an exemption, in which case they shall be entitled to one exemption to be apportioned between each of their respective homes in proportion to the value thereof.

(5) That portion of a residential duplex and that portion of land appurtenant to the duplex which are occupied by the owner of the duplex and land as his residence, provided that:

(A) The exemption shall not be allowed in respect to any duplex owner who claims any other home exemption;

(B) The portion of the appurtenant land shall not be exempt unless owned in fee by the duplex owner; and

(C) A husband or wife owner of the duplex shall not be allowed a full exemption where the husband and wife are living separate and apart and each is maintaining a duplex or home entitled to an exemption, in which case they shall be entitled to one exemption to be apportioned between each of their respective homes in proportion to the value thereof.

(6) Premises held under an agreement to purchase the same for a home, where the agreement has been duly entered into and recorded prior to January 1 preceding the tax year for which the exemption is claimed, whereby the purchaser agrees to pay all taxes while purchasing the premises.

(7) An apartment which is a living unit (held under a lease by the tenant thereof) in a multi-unit residential building used for retirement purposes under a lease for a term to last during the lifetime of the lessee and his or her surviving spouse and which apartment is used as a residence by the lessee and his

or her surviving spouse, and where the apartment unit reverts back to the lessor upon the death of the lessee and his or her surviving spouse, and where the lease has been duly entered into and recorded prior to January 1 preceding the tax year for which the exemption is claimed, and whereby the lessee agrees to pay all taxes during the term of the lease.

The subletting by the taxpayer of not more than one room to a tenant shall not affect the exemption provided for by Sec. 5A-11.4.

As used in Sec. 5A-11.4, in the first paragraph of Sec. 5A-7.1, and in Sec. 5A-11.1, the word "lease" shall be deemed to include a sublease, and the word "lessee" shall be deemed to include a sublessee. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.6 Homes Of Totally Disabled Veterans.

Real property owned and occupied as a home by any person who is totally disabled due to injuries received while on duty with the armed forces of the United States, or owned by any such person together with his or her spouse and occupied by either or both spouses as a home, or owned and occupied by a widow or widower of such totally disabled veteran who shall remain unmarried and who shall continue to own and occupy the premises as a home, is hereby exempted from all property taxes, other than special assessment, provided:

(1) That such total disability was incurred while on duty as a member of the armed forces of the United States, and that the director may require proof of total disability.

(2) That the home exemption shall be granted only as long as the veteran claiming exemption remains totally disabled.

(3) That the exemption shall not be allowed on more than one house for any one person.

(4) That a person living on the premises, a portion of which is used for commercial purposes, shall not be entitled to an exemption with respect to such portion, but shall be entitled to an exemption with respect to the portion used exclusively as a home; provided, that this exemption shall not apply to any structure, including the land thereunder, which is used for commercial purposes.

For the purposes of this section, the word "home" includes the entire homestead when it is occupied by a qualified totally disabled veteran as a home; houses where the disabled veteran owner sublets not more than one room to a tenant; and premises held under an agreement to purchase the same for a home where the agreement has been duly entered into and recorded prior to January 1 preceding the tax year for which exemption is claimed, whereby the

purchaser agrees to pay all taxes while purchasing the premises. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.7 Person Affected With Leprosy.

Any person who has been declared by authority of law to be a person affected with leprosy in the communicable stage and is admitted to a hospital for isolation treatment, shall, so long as he is so hospitalized, and thereafter for so long as such person has been so declared to be therefrom temporarily released, shall, so long as he remains or continues under temporary release, be exempted from real property taxes on all real property owned by him on the date when he was declared to be a person so affected with leprosy, up to, but not exceeding, a taxable value of $50,000. (Ord. No. 394, July 1, 1981; Ord. No. 420, January 1, 1983; Ord. No. 598, December 17, 1991)

Sec. 5A-11.8 Exemption, Persons With Impaired Sight Or Hearing And Persons Totally Disabled.

Any person who qualifies under the following subsections, (a), (b), or (c), shall be allowed to apply for only one of said exemptions.

(a) Any person who is blind as defined in Section 235-1, H.R.S., shall, so long as his sight is so impaired, be exempt from real property taxes on all real property owned by him up to, but not exceeding a taxable value of $50,000. The impairment of sight shall be certified to on forms prescribed by the Director of Finance or by the State Department of Taxation on the basis of a written report on an examination performed by a qualified ophthalmologist or a qualified optometrist.

(b) Any person who is totally disabled, as defined in Section 235-1, H.R.S., shall, so long as he is totally disabled, be exempt from real property taxes on all real property owned by him up to, but not exceeding a taxable value of $50,000. The disability shall be certified to by a physician licensed under Chapter 453, Hawaii Revised Statutes, or Chapter 460, Hawaii Revised Statutes, or both, on forms prescribed by the Director of Finance or by the State Department of Taxation.

(c) Any person who is deaf, as defined in Section 235-1, H.R.S., shall, so long as his hearing is so impaired, be exempt from real property taxes on all real property owned by him up to, but not exceeding a taxable value of $50,000. The impairment of hearing shall be certified on forms prescribed by the Director of Finance or by the State Department of Taxation on the basis of a written report on an examination performed by a qualified otolaryngologist. (Ord. No. 394, July 1, 1981; Ord. No. 420, January 1, 1983; Ord. No. 547, October 4, 1988; Ord. No. 598, December 17, 1991)

Sec. 5A-11.9 Nonprofit Medical, Hospital Indemnity Association; Tax Exemption.

Every association or society organized and operating under Chapter 433, H.R.S., solely as a nonprofit medical indemnity or hospital service association or society or both shall be, from the time of such organization, exempt from real property taxes on all real property owned by it. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.10 Charitable, Etc., Purposes.

(a) There shall be exempt from real property taxes real property designated in subsection (b) or (c) and meeting the requirements stated therein, actually and (except as otherwise specifically provided) exclusively used for nonprofit purposes. The exemption shall be effective upon the filing of an application for County or State land use permits, zoning permits, or building permits. If an exemption is claimed under subsection (b) or (c), an exemption for the same property may not also be claimed under the other subsection.

For the 2003-2004 tax year only, the deadline to file for the exemption is January 31, 2003. The preceding deadline of January 31, 2003, is hereby repealed on February 1, 2003.

(b) This subsection applies to property owned in fee simple, leased, or rented for a period of one year or more, by the person using the property for the exempt purposes, hereinafter referred to as the person claiming the exemption. If the property for which exemption is claimed is leased or rented, the lease or rental agreement shall be in force and recorded in the bureau of conveyances.

Exemption is allowed by this subsection to the following property:

(1) Property used for school purposes including:

(A) Kindergartens, grade schools, junior high schools, and high schools, which carry on a program of instruction meeting the requirements of the compulsory school attendance law, Section 298-9, H.R.S., or which are for preschool children who have attained or will attain the age of five (5) years on or before December 31 of the school year, provided that any claim for exemption based on any of the foregoing uses shall be accompanied by a certificate issued by or under the authority of the department of education stating that the foregoing requirements are met.

(B) Junior colleges or colleges carrying on a general program of instruction of college level. The property exempt from taxation under this paragraph is limited to buildings for educational purposes (including dormitories), housing owned by the school or college and used as a residence for personnel employed at the school or college, campus and athletic grounds, and realty used for vocational purposes incident to the school or college.

(2) Property used for hospital and nursing home purposes, including housing for personnel employed at the hospital; in order to qualify under this paragraph the person claiming the exemption shall present with the claim a certificate issued by or under the authority of

the department of health that the property for which the exemption is claimed consists in, or is a part of, hospital or nursing home facilities which are properly constituted under the law and maintained to serve, and which do serve the public.

(3) Property used for church purposes, including incidental activities, parsonages, and church grounds, the property exempt from taxation being limited to realty exclusive of burying grounds (exemption for which may be claimed under paragraph (4)).

(4) Property used as cemeteries (excluding, however, property used for cremation purposes) maintained by a religious society, or by a corporation, association or trust organized for such purpose.

(5) Property dedicated to public use by the owner, which dedication has been accepted by the state or county, reduced to writing, and recorded in the bureau of conveyances; and property which has been set aside for public use and actually used therefor for a period not less than five (5) years.

(6) Property owned by any nonprofit corporation, admission to membership of which is restricted by the corporate charter to members of a labor union; property owned by any government employees' association or organization, one of the primary purposes of which is to improve employment conditions of its members; property owned by any trust, the beneficiaries of which are restricted to members of a labor union; property owned by any association or league of credit unions chartered by the United States or the State, the sole purpose of which is to promote the development of federal credit unions in the State. Notwithstanding any provision in this section to the contrary, the exemption shall apply to property or any portion thereof which is leased, rented, or otherwise let to another, if such leasing, renting, or letting is to a nonprofit association, organization, or corporation.

(c) This subsection shall apply to property owned in fee simple or leased or rented for a period of one year or more, the lease or rental agreement being in force and recorded in the bureau of conveyances at the time the exemption is claimed, by either:

(1) A corporation, society, association, or trust having a charter or other enabling act or governing instrument which contains a provision or has been construed by a court of competent jurisdiction as providing that in the event of dissolution or termination of the corporation, society, association, or trust, or other cessation of use of the property for the exempt purpose, the real property shall be applied for another charitable purpose or shall be dedicated to the public; or

(2) A corporation chartered by the United States under Title 36, United States Code, as a patriotic society. Exemption is allowed by this subsection for property used for charitable purposes which are of a community, character building, social service, or educational nature, including museums, libraries, art academies, and senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by Section 202 of the Housing Act of 1959, as amended by the Housing Act of 1961, the

Senior Citizens Housing Act of 1962, the Housing Act of 1964 and the Housing and Urban Development Act of 1965.

(d) If any portion of the property which might otherwise be exempted under this section is used for commercial or other purposes not within the conditions necessary for exemption (including any use the primary purpose of which is to produce income even though such income is to be used for or in furtherance of the exempt purposes) that portion of the premises shall not be exempt but the remaining portion of the premises shall not be deprived of the exemption if the remaining portion is used exclusively for purposes within the conditions necessary for exemption. In the event of an exemption of a portion of a building, the tax shall be assessed upon so much of the value of the building (including the land thereunder and the appurtenant premises) as the proportion of the floor space of the non-exempt portion bears to the total floor space of the building.

(e) The term "for nonprofit purposes" as used in this section requires that no monetary gain or economic benefit inure to the person claiming the exemption, or any private shareholder, member, or trust beneficiary. "Monetary gain" includes without limitation any gain in the form of money or money's worth. "Economic benefit" includes without limitation any benefit to a person in the course of his business, trade, occupation, or employment. (Ord. No. 394, July 1, 1981; Ord. No. 509, November 23, 1987; Ord. No. 800, December 23, 2002)

Sec. 5A-11.11 Property Used In Manufacture Of Pulp And Paper.

All property in the County, both real and personal, actually and solely used or to be used, whether by the owner or lessee thereof, in connection with the manufacture of pulp and paper from bagasse fibre, shall be exempt from property taxes for a period of five (5) years from the first day of January following commencement of construction of a plant or plants on the property for such purpose. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.12 Crop Shelters.

Any other law to the contrary notwithstanding, any permanent structure constructed or installed on any taxable real property consisting of frames or supports and covered by rigid plastic, fiber glass, or other rigid and semi-rigid transparent or translucent material, and including wooden laths, used primarily for the protection of crops, shall be exempted in determining and assessing the value of such taxable real property for ten (10) years or for a period of ten (10) years from the first day of January following commencement of construction or installation of the structure on the property for such purpose; provided that any temporary structure so constructed or installed and

covered by flexible plastic or other flexible transparent or translucent material, used for such purpose, shall be so exempted not subject to the ten-year limitation; provided, further, that such exemption shall continue only so long as the structure is maintained in good condition. Only structures used for commercial agricultural or horticultural purposes shall be included in the exemption. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.13 Exemption, Dedicated Lands In Urban Districts.

(a) Portions of taxable real property which are dedicated and approved by the director as provided for by this section shall be exempted in determining and assessing the value of such taxable real property.

(b) Any owner of taxable real property in an urban district desiring to dedicate a portion or portions thereof for landscaping, open spaces, public recreation, and other similar uses shall petition the director stating the exact area of the land to be dedicated and that the land is not within the setback and open space requirements of applicable zoning and building code laws and ordinances, and that the land shall be used, improved, and maintained in accordance with and for the sole purpose for which it was dedicated, except that land within a historic district may be so dedicated without regard to the setback and open space requirements of applicable zoning and building code laws and ordinances.

The director shall make a finding as to whether the use to which such land will be dedicated has a benefit to the public at least equal to the value of the real property taxes for such land. Such finding shall be measured by the cost of improvements, the continuing maintenance thereof, and such other factors as the director may deem pertinent. If the director finds that the public benefit is at least equal to the value of real property taxes for such land, he shall approve the petition and declare such land to be dedicated land.

(c) The approval of the petition by the director shall constitute a forfeiture on the part of the owner of any right to change the use of his land for a minimum period of ten (10) years, automatically renewable indefinitely, subject to cancellation by either the owner or the director upon five (5) years' notice at any time after the end of the fifth year.

(d) Failure of the owner to observe the restrictions on the use, improvement, and maintenance of his land shall cancel the special tax exemption privilege retroactive to the date of the original dedication, and all differences in the amount of taxes that were paid and those that would have been due from the assessment of the tax exempted portion of his land shall be payable together with interest of five per

cent (5%) a year from the respective dates that these payments would have been due. Failure to observe the restrictions on the use means failure for a period of over twelve (12) consecutive months to use, improve, and maintain the land in the manner requested in the petition or any overt act changing the use for any period. Nothing in this paragraph shall preclude the county from pursuing any other remedy to enforce the covenant on the use of the land.

(e) The director shall prescribe the form of the petition. The petition shall be filed with the director by September 1 of any calendar year and shall be approved or disapproved by December 15 of such year. If approved, the exemption based upon the use requested in the dedication shall be effective January 1, next.

(f) The owner may appeal any disapproved petition as in the case of an appeal from an assessment.

(g) The director shall make and adopt necessary rules and regulations including such rules and regulations governing minimum areas which may be dedicated for the improvement and maintenance of such areas.

(h) "Landscaping" means lands which are improved by landscape architecture, cultivated plantings, or gardening.

(i) "Open spaces" means lands which are open to the public for pedestrian use and momentary repose, relaxation, and contemplation.

(j) "Public recreation" refers to lands which may be used by the public as parks, playgrounds, historical sites, camp grounds, wild life refuges, scenic sites, and other similar uses.

(k) "Owner" includes lessees of real property whose lease term extends at least ten (10) years from January 1 following the filing of the petition. (Ord. No. 394, July 1, 1981; Ord. No. 523, December 9, 1987)

Sec. 5A-11.14 Exemptions For Air Pollution Control Facility.

The value of all property in the County (not including a building and its structural components, other than a building which is exclusively a treatment facility) actually and solely used or to be used as an air pollution control facility as the term is defined in Chapter 237, H.R.S., shall be exempted from the measure of the taxes imposed by this chapter; provided, however, the property exemption shall be applicable only with respect to a certified facility which is property (1) the construction reconstruction or erection of which is completed by the taxpayer after June 30, 1969, or (2) acquired by the taxpayer after June 30, 1969, if the original use of the property commences with the taxpayer after June 30, 1969; provided, further, the facility is placed in service by the taxpayer before July 1, 1975.

Application for the exemption provided herein shall

first be made with the director of health who shall, if satisfied that the facility meets the pollution emission criteria established by the state department of health, certify to that fact. Upon receipt of the certification from the state department of health, the director shall exempt the facility from the tax imposed by this chapter. A new certificate shall be obtained from the state director of health and filed with the director every two years certifying that the pollution control facility complies with the pollutant emission criteria established by the state department of health. The director shall furnish all forms required by this section.

The director shall, pursuant to Chapter 91, H.R.S., promulgate rules and regulations necessary to administer this section. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.15 Alternate Energy Improvements, Exemption.

(a) The value of all improvements in the county (not including a building or its structural components, except where alternate energy improvements are incorporated into the building, and then only that part of the building necessary to such improvement) actually used for an alternate energy improvement shall be exempted from the measure of the taxes imposed by this chapter.

(b) As used in this section "alternate energy improvement" means any construction or addition, alteration, modification, improvement, or repair work undertaken upon or made to any building which results in:

(1) The production of energy from a source, or uses a process which does not use fossil fuels or nuclear fuels or geothermal source. Such energy source may include, but shall not be limited to solid wastes, wind, solar, or ocean waves, tides, or currents.

(2) An increased level of efficiency in the utilization of energy produced by fossil fuels or in the utilization of secondary forms of energy dependent upon fossil fuels for its generation.

(3) Alternate energy production or energy by-products transferred, marketed, or sold on a commercial basis shall not qualify for exemption under the provisions of this section. Provided further, that alternate energy improvements used primarily for personal consumption and producing excess energy incidental to personal consumption may transfer, market, or sell such excess energy produced and continue to qualify for the exemption as provided for by the provisions of this section; however, the transfer, marketing, or sale shall be limited to less than twenty-five percent of the total energy output produced by such improvements. Nuclear fission and geothermal energy sources shall be excluded from the provisions of this section.

(4) Application for the exemption provided by this section shall be made with the director of finance on or before December 31, preceding the tax year for which the exemption is claimed, except that no claim need be filed for the exemption of solar water collectors, heaters, heat pumps and similar devices. The director of finance may require the taxpayer to furnish reasonable information in order that he may ascertain the validity of the claim for exemption made under this section and may adopt rules and regulations to implement this section. (Ord. No. 394, July 1, 1981; Ord. No. 451, September 21, 1983)

Sec. 5A-11.16 Fixtures Used In Manufacturing Or Producing Tangible Personal Products.

There shall be exempted and excluded from the measure of the taxes imposed by this chapter, all fixtures which are categorized as machinery and other mechanical or other allied equipment which are primarily and substantially used in manufacturing or producing tangible personal products. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.17 Public Property, Etc.

The following real property shall be exempt from taxation:

(1) Real property belonging to the United States, to the state, or to the county; provided that real property belonging to the United States shall be taxed upon the use or occupancy thereof as provided in Sec. 5A-11.18, and there shall be a tax upon the property itself if and when the Congress of the United States so permits, to the extent so permitted and in accordance with any conditions or provisions prescribed in such act of Congress; provided, further, that real property belonging to the state or to the county, or belonging to the United States and in the possession, use, and control of the state, shall be taxed on the fee simple value thereof, and private persons shall pay the taxes thereon and shall be deemed the "owners" thereof for the purposes of this chapter, in the following cases:

(A) Property held on January 1 preceding the tax year under an agreement for its conveyance by the government to private persons shall be deemed fully taxable, the same as if the conveyance had been made.

(B) Property held on January 1 preceding the tax year under a government lease shall be entered in the assessment lists and tax rolls for that year as fully taxable for the entire tax year, but adjustments of the taxes so assessed may be made as provided in Sec. 5A-4.1, so that such tenants

are required to pay only so much of the taxes as is proportionate to the portion of the tax year during which the real property is held or controlled by them.

(C) Property held under a government lease commencing after January 1 preceding the tax year or under an agreement for its conveyance or a conveyance by the government, made after January 1 preceding the tax year, shall be assessed as omitted property as provided in Sec. 5A-3.4, but the taxes thereon shall be prorated so as to require the payment of only so much of the taxes as is proportionate to the remainder of the tax year.

(D) Property where the occupancy by the tenant for commercial purposes has continued for a period of one year or more, whether the occupancy has been on a permit, license, month-to-month tenancy, or otherwise, shall be fully taxable to the tenant after the first year of occupancy, and the property shall be assessed in the manner provided in subdivisions (B) and (C) of this paragraph for the assessment of properties held under a government lease; provided that the property occupied by the tenant solely for residential purposes on a month-to-month tenancy shall be excluded from this paragraph.

(E) In any case of occupancy of a building or structure by two or more tenants, or by the government and a tenant, under a lease for a term of one year or more, the tax shall be assessed to the tenant upon so much of the value of the entire real property as the floor space occupied by the tenant proportionately bears to the total floor space of the structure or building.

For the purposes of subdivisions (B) and (C) of this subsection: "Lease" means any lease for a term of one year or more, or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term "lease", be deemed a lease notwithstanding any right of revocation, cancellation, or termination reserved therein or provided for thereby. Whenever a lease is such that the highest and best use cannot be made of the property by the lessee, the measure of the tax imposed on such property pursuant to subdivisions (B) and (C) shall be its fee simple value upon consideration of the highest and best use which can be made of the property by the lessee.

Provided, further, that real property belonging to the United States, even though not in the possession, use, and control of the state, shall be taxed on the fee simple value thereof, and private persons shall pay the taxes thereon and shall be deemed the "owners" thereof for the purposes of this chapter, in the following cases:

(i) Property held on January 1 preceding the tax year under an agreement for the conveyance of the same by the government to private persons shall be deemed fully taxable, the same as if the conveyance had been made, but the assessment thereof shall not impair and shall be so made as to not impair, any right, title, lien, or interest of the United States.

(ii) Property held under an agreement for the conveyance of the same or a conveyance of the same by the government, made after January 1 preceding the tax year, shall be assessed as omitted property as provided in Sec. 5A-3.4, but the taxes thereon shall be prorated so as to require the payment of only so much of such taxes as is proportionate to the remainder of the tax year, and in the case of property held under an agreement for the conveyance of the same but not yet conveyed, the assessment thereof shall not impair, and shall be so made as to not impair, any right, title, lien, or interest of the United States.

(2) Real property under lease to the state or any county under which lease the lessee is required to pay the taxes upon such property.

(3) Subject to Section 101-39(B), H.R.S., any real property in the possession of the state or any county which is the subject of eminent domain proceedings commenced for the acquisition of the fee simple estate in such land by the state or such county; provided the fact of such possession has been certified to the director as provided by Section 101-36 or 101-38, H.R.S., or is certified not later than December 31 preceding the tax year for which such exemption is claimed.

(4) Real property with respect to which the owner has granted to the state or any county thereof a right of entry and upon which the state or county has entered and taken possession under the authority of the right of entry with intention to acquire the fee simple estate therein and to devote the real property to public use; provided the state or county shall have, prior to December 31 preceding the tax year for which

the exemption is claimed, certified to the director of the date upon which it took possession.

(5) Any portion of real property within the area upon which construction of buildings is restricted or prohibited and which is actually rendered useless and of o value to the owners thereof by virtue of any ordinance of any county, establishing setback lines thereon; provided, that in order to secure the exemption the person claiming it shall annually file between December 15 and December 31 preceding the applicable tax year, an affidavit with the director describing the real property in detail and setting forth the facts upon which exemption is claimed, together with a written agreement that in consideration of the exemption from taxes, he will not make use of the land in any way whatsoever during the ensuing year. Any person who has secured such exemption who violates the terms of the agreement shall be fined twice the amount of the tax which would be assessed upon the land but for such exemption.

(6) Real property exempted by any laws of the United States which exemption is not subject to repeal by the council.

(7) Any other real property exempt by law. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.18 Lessees Of Exempt Real Property.

(a) When any real property which, for any reason is exempt from taxation, is leased to and used or occupied by a private person in connection with any business conducted for profit, such use or occupancy shall be assessed and taxed in the same amount and to the same extent as though the lessee were the owner of the property and as provided in subsection (b), provided that:

(1) The foregoing shall not apply to the following:

(A) Federal property for which payments are made in lieu of taxes in amounts equivalent to taxes which might otherwise be lawfully assessed;

(B) Any property or portion thereof taxed under any other provision of this chapter to the extent and for the period so taxed.

(2) The term "lease" shall mean any lease for a term of one year or more, or which is renewable for such period as to constitute a total term of one year or more. A lease having a stated term shall, if it otherwise comes within the meaning of the term "lease", be deemed a lease notwithstanding any right of revocation, cancellation, or termination reserved therein or provided for thereby.

(3) The assessment of the use or occupancy shall be made in accordance with the highest and best use permitted under the terms and conditions of the lease.

(b) The tax shall be assessed to and collected from such lessee as nearly as possible in the same manner and time as the tax assessed to owners of real property, except that the tax shall not become a lien against the property. In case the use or occupancy is in effect on January 1 preceding the tax year, the lessee shall be assessed for the entire year but adjustments of the tax so assessed shall be made in the event of the termination of the use or occupancy during the year so that the lessee is required to pay only so much of the tax as is proportionate to the portion of the tax year during which the use or occupancy is in effect, and the director is hereby authorized to remit the tax due for the balance of the tax year. In case the use or occupancy commences after January 1 preceding the tax year, the lessee shall be assessed for only so much of the tax as is proportionate to the period that the use or occupancy bears to the tax year.

The assessment of the use or occupancy of real property made under this section shall not be included in the aggregate value of taxable realty for the purposes of Sec. 5A-6.3 but the council, at the time that it is furnished with information as to the value of taxable real property, shall also be furnished with information as to the assessments made under this section, similarly determined but separately stated.

If a use or occupancy is in effect on January 1 preceding the tax year, the assessment shall be made and listed for that year and the notice of assessment shall be given to the taxpayer in the manner and at the time prescribed in Sec. 5A-2.1, and when so given, the taxpayer, if he deems himself aggrieved, may appeal as provided in Section 5A-12.1. If a use or occupancy commences after January 1 preceding the tax year or if for any reason an assessment is omitted for any tax year, the assessment shall be made and listed and notice thereof shall be given in the manner and at the time prescribed in Sec. 5A-2.1, and an appeal from an assessment so made may be taken as provided in Sec. 5A-3.4. (Ord. No. 394, July 1, 1981; Ord. No. 524, December 9, 1987)

Sec. 5A-11.19 Property Of The United States Leased Under The National Housing Act.

Real property belonging to the United States leased pursuant to Title VIII of the National Housing Act, as amended or supplemented from time to time:

(1) Shall not be taxed under this chapter upon the lessee's interest or any other interest therein, except as provided in paragraph 2.

(2) Shall be taxed under this chapter to the

extent of and measured by the value of the lessee's interest in any portion of the real property (including land and appurtenances thereof and the buildings and other improvements erected on or affixed to the same) used for, or in connection with, or consisting in, shops, restaurants, cleaning establishments, taxi stands, insurance offices, or other business or commercial facilities. The tax shall be assessed to and collected from the lessee. The assessment of such property shall not impair, and shall be so made as to not impair, any right, title, lien, or interest of the United States. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.20 Exemption For Low And Moderate-Income Housing.

(a) For the purposes of this section, "nonprofit or limited distribution mortgagor" means a mortgagor who qualifies for and obtains mortgage insurance under Section 202, 221(d)(3), or 236 of the National Housing Act as a nonprofit or limited distribution mortgagor.

(b) Real property for a housing project, which is owned and operated by a nonprofit or limited distribution mortgagor or which is owned and operated by a person, corporation or association regulated by federal, state or county laws or ordinance as to rents, charges, profits, dividends, development costs and methods of operation, shall be exempt from property taxes.

(c) Exemptions claimed under this section shall disqualify the same property from receiving an exemption under Section 53-38, H.R.S.

(d) The director shall, pursuant to Chapter 91, H.R.S., promulgate rules and regulations necessary to administer this section. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.21 Claim For Exemption.

(a) Notwithstanding any provision in this chapter to the contrary, any real property exempt from property taxes under Sec. 5A-11.20 shall be exempt from property taxes from the date the property is qualified for the exemption; provided that a claim for exemption is filed with the director within sixty (60) days of the qualification. As used herein, the date of the qualification shall be the date when the mortgage made by a nonprofit or limited distribution mortgagor and insured under Section 202, 221(d)(3), or 236 of the National Housing Act is filed for recording with the registrar of the bureau of conveyances or the assistant registrar of the land court of the state, whichever is applicable.

(b) After the initial years of the qualification, the claim for exemption shall be filed in the manner provided by applicable law or rule or regulation.

(c) In the event property taxes have been paid to the county in advance for real property subsequently becoming qualified for the exemption, the director shall refund to the nonprofit or limited distribution mortgagor owning the property that portion of the taxes attributable to and paid for the period after the qualification. (Ord. No. 394, July 1, 1981)

Sec. 5A-11.22 Historic Residential Real Property Dedicated For Preservation, Exemption.

(a) Portions of residential real property which are dedicated and approved by the director of finance as provided for by this section, shall be exempt from real property taxation to the following extent:

(1) those residential properties qualifying for a home exemption under section 5A-11.4 and those residential properties owned by a nonprofit organization as defined in section 5A-11.10(c) shall be exempt to the extent of 100% of the assessed value of the improvements and 100% of the assessed value of the land area as determined by the director of finance pursuant to subsection (c), except that the minimum tax provision of section 5A-6.3(g) shall apply; and

(2) all other properties shall be exempt to the extent of 100% of the assessed value of the improvements and 50% of the assessed value of the land as determined by the director of finance pursuant to subsection (c).

"Residential" as used in this subsection shall mean improved with a building designed for or adapted to residential use and currently used solely as a dwelling.

(b) An owner of taxable real property that is the site of an historic residential property that has been individually placed on the Hawaii Register of Historic Places after January 1, 1977, desiring to dedicate the property or a portion thereof for historic preservation, may petition the director of finance by September 1 of any year, provided that in cases of leasehold property the petition shall be signed by both the lessor and the lessee. The form of the petition shall be determined by the director of finance and shall include:

(1) a copy of the registration form for the Hawaii Register of Historic Places, certified by the historic preservations office, department of land and natural resources, State of Hawaii, including all attachments;

(2) a map showing the area to be dedicated and the location of the historic buildings, structures and sites as set forth on the registration form, provided the director may require a map drawn to scale by a licensed surveyor if it is necessary in order to make a determination of the land area to be exempted;

(3) a certification by the owner that the property is visually accessible to the public or that the public shall be allowed visual access at least twelve days per

year, the specific dates of which shall be set forth in the petition; and

(4) the owner's authorization for members of the assessment staff to visit and inspect the property as necessary to conduct a finding of fact as set forth in paragraph (c).

(c) Upon receipt of a completed petition as set forth in subsection (b) the director of finance shall prepare findings of fact as to whether the property has been placed on the Hawaii Register of Historic Places after January 1, 1977 and whether the building is residential as defined in this section.

If the findings of fact are favorable, the director shall approve the petition and determine what portion or portions of the real property shall be exempted. The exempt area shall be limited to the area surrounding the historic residence traditionally and currently maintained as its grounds, including the lawn, landscaped areas and other areas directly associated with the residential use of the historic dwelling, and such historic sites as designated on the Registration Form for the Hawaii Register of Historic Places, provided the exempt area shall not include any area not on the Hawaii Register of Historic Places nor any lots of record which are not improved with a historic residence meeting the requirements of this section. The director shall notify the owner of the approval or disapproval of the petition by December 15 of the year of application. If the petition is approved, the director shall prepare a notice of dedication and deliver it to the owner along with the notice of approval. The owner shall execute and record the notice of dedication with the Bureau of Conveyances of the Department of Land and Natural Resources so that prospective buyers will be put on notice as to the restrictions on the property. The exemption shall take effect on January 1 of the calendar year following the year of application; provided that if the director does not receive a recorded copy of the notice of dedication within 45 days of the date of approval, the exemption shall be canceled and the dedication approval shall be rescinded.

(d) Upon approval of the petition, the owner shall enter into an agreement with the director of finance to maintain the historic residence in structurally sound and weathertight condition free from decay, or to perform such repairs as necessary for the dwelling to be in structurally sound and weathertight condition free from decay by the fifth year following the effective date of the exemption. Such condition shall be certified in writing by a licensed architect or general contractor and submitted to the director of finance by September 15 of the fifth and tenth years of the first ten-year exempt period and every tenth year after that as long as the property remains dedicated to historic preservation under this section.

The approval of the petition by the director shall constitute a forfeiture on the part of the owner of any right:

(1) to subdivide or to register under the Condominium Property Regime any portion of the exempt area.

(2) to change the use of the exempt property to other than residential use, provided that if the new use meets the requirements for exemption under section 5A-11.10, the provisions of subsection (f) shall not apply.

(3) to construct or cause to be constructed any additions or new buildings in the exempt area without approval by the State Historic Preservation Office, provided that no new dwelling units or guest houses may be built in the exempt area. The additions and buildings as approved and constructed and the land they occupy shall be fully taxable.

The approval of the petition shall also constitute a commitment, on the part of the owner to maintain the visual accessibility of the building to the public, to maintain the exempt land area and to continue to be listed on the Hawaii Register of Historic Places.

These restrictions and the exemption shall be in effect for a period of ten (10) years.

(e) The owner may renew the exemption for additional ten-year periods by applying for such renewal according to the same timetable as a new petition subject to the director's certification that the property continues to meet the requirements set forth in subsection (c).

(f) Failure of the owner to provide the certification of structural soundness and weathertightness as provided in subsection (d) or to observe the other restrictions of subsection (d) shall cancel the tax exemption and subject the owner to a retroactive tax and interest which shall be due and payable within 30 days following the mailing of the notice of retroactive assessment to the owner. The retroactive tax and interest shall be computed from the beginning of the tax year for which the application was originally approved to the end of the tax year that the cancellation occurred. The retroactive tax for each tax year shall be based on the difference in the amount of taxes that were paid and those that would have been due but for the exemption allowed by this section. The retroactive tax shall be payable together with interest at twelve percent (12%) per annum from the respective dates that these payments would have been due provided the provision in this paragraph shall not preclude the county from pursuing any other remedy to enforce the covenant on the use of the land.

The retroactive taxes and interest due and owing as a result of a cancellation of the dedication shall be a paramount lien upon the property pursuant to section 5A-5.1.

(g) Any person who becomes an owner of real property that is permitted an exemption under this section shall be subject to the restrictions and duties imposed under this section.

(h) An owner applicant may appeal any determination as in the case of an appeal from an assessment.

(i) Subject to Chapter 91, Hawaii Revised Statutes, the director shall adopt rules and regulations deemed necessary to accomplish the foregoing. (Ord. No. 434, September 16, 1982; Ord. No. 467, September 13, 1984; Ord. No. 564, January 22, 1990; Ord. No. 637, October 14, 1993)

Sec. 5A-11.23 Other Exemptions.

(a) Exemptions from real property taxes as set forth in Chapter 53, Chapter 183, Chapter 186, and Chapter 234, Hawaii Revised Statutes, and in Section 208 of the Hawaiian Homes Commission Act, 1920, and which were enacted prior to November 7, 1978, shall remain in effect and be recognized by the county in its administration of the real property tax system; provided, that real property leased under homestead and not general leases pursuant to the authority granted the Department of Hawaiian Home Lands by Section 207 of the Hawaiian Homes Commission Act, 1920, shall be exempt from real property taxes, the seven year limitation on the exemption afforded by Section 208 of the Hawaiian Homes Commission Act, 1920, notwithstanding. Any exemption from real property taxation granted by H.R.S. chapter 239 shall be of no force and effect.

(b) If State legislation is enacted requiring a public utility under Hawaii Revised Statutes chapter 239 to pay a tax to the County of at least 1.885% upon the gross income of the public utility's business within the County, commencing with payments in July 2001, then, notwithstanding any provision in K.C.C. chapter 5A to the contrary including, but not limited to, K.C.C. Sec. 5A-8.3, the County exemption from real property taxes for a public utility under Hawaii Revised Statutes chapter 239, as this exemption was codified in K.C.C. Sec. 5A-11.23 on August 1, 2000, shall be reinstated retroactive to January 1, 2001.

If reinstated, this exemption shall be construed and applied in conjunction with Hawaii Revised Statutes Sec. 239-3, as Hawaii Revised Statutes Sec. 239-3 was codified on August 1, 2000; provided that the exemption shall be limited to real property used by the public utility in its public utility business. For the 2001-2002 tax year only, a public utility shall apply for an exemption no later than 45 calendar days after the enactment of legislation requiring a public utility under Hawaii Revised Statutes chapter 239 to pay a tax to the County of at least 1.885% upon the gross income of the public utility's business within the County, commencing with payments in July 2001. After the 2001-2002 tax year, such claims for exemption shall be filed by the deadline specified in Hawaii Revised Statutes Sec. 239-3, as codified on August 1, 2000.

As used within this Sec. 5A-11.23, 'public utility' has the meaning ascribed to it in Hawaii Revised Statutes Sec. 269-1, except airlines, motor carriers, common carriers by water, and contract carriers subject to taxation under Hawaii Revised Statutes Sec. 239-6. (Ord. No. 394, July 1, 1981; Ord. No. 563, January 4, 1990; Ord. No. 682, April 13, 1995; Ord. No. 756, November 30, 2000)

Sec. 5A-11.24 Credit Union Exemption

Real Property owned in fee simple or leased for a period of one year or more by a federal or state credit union which is actually and exclusively used for credit union purposes shall be exempt from real property taxes. If the property for which exemption is claimed is leased, the lease agreement shall be in force and recorded in the Bureau of Conveyances at the time the exemption is claimed. As used in this section, "federal credit union" means a credit union organized under the Federal Credit Union Act of 1934, 12 U.S.C. Chapter 14, as amended, and "state credit union" means a credit union organized under the Hawaii Credit Union Act, HRS Chapter 410, as amended.

If any portion of the property which might otherwise be exempted under this section is used for commercial or other purposes not within the conditions necessary for exemption (including any use the primary purpose of which is to produce income even though such income is to be used for or in furtherance of the exempt purposes) that portion of the premises shall not be exempt but the remaining portion of the premises shall not be deprived of the exemption if the remaining portion is used exclusively for purposes within the conditions necessary for exemption. In the event of an exemption of a portion of a building, the tax shall be assessed upon so much of the value of the building (including the land thereunder and the appurtenant premises) as the proportion of the floor space of the nonexempt portion bears to the total floor space of the building. (Ord. No. 509, November 23, 1987)

Sec. 5A-11.25 Orchard Development Exemption.

(a) Definitions. When used herein:

(1) "Director" means the Director of Finance or the Director's duly authorized representative;

(2) "Orchard development property" means any property (as defined in Section 5A-1.1) classified as orchard development property pursuant to this Section;

(3) "Owner" includes a lessee of real property with an unexpired lease term of not less than the period of the agreement provided in Section 5A-11.25 (d).

(4) "Orchard crop" means a perennially-harvested crop from one planting which shall endure for at least ten years.

(b) Eligibility; Application. The owner of property which is suitable for the raising of a merchantable orchard crop having a normal period of development from the initial time of planting to the first harvest of not less than two years and which contains an area of not less than 50 acres may apply to the Director for classification of the property as orchard development property.

The Director shall prescribe the form of the application which shall be filed with the Director by September 1 of any year. The application shall identify the property, shall specify the orchard crop, shall specify when the planting was accomplished, provided the owner shall have until December 31 of the year of application to complete planting, and shall be accompanied by a map delineating the orchard area.

(c) Classification, Appeal. Upon receipt of the application, the Director shall prepare a finding of fact. If the Director finds that the property is in use as set forth in the application, that the planted crop has a normal period of development from the initial time of planting to the first harvest of not less than two years, and that the area in cultivation is at least 50 acres in size, the application shall be approved by the Director and the property shall be classified as orchard development property. The Director may consult with appropriate government agencies and other agriculture experts in making these determinations. The owner may appeal any disapproved application as in the case of an appeal from an assessment.

The owner shall be notified of an approval or disapproval of an application by January 31 preceding the tax year for which the application was filed.

(d) Agreement. Upon the approval of the application, the owner shall agree to the following terms and conditions relative to the establishment and management of the orchard development property:

(1) The term of the agreement shall be for two years beyond the normal period of development from the initial time of planting to the first harvest as determined by the Director's finding of fact;

(2) The owner shall maintain the orchard according to good orchard management practices;

(3) The agreement shall be cancelled and terminated and the property shall thereby be declassified and become subject to the conditions specified in Section 5A-11.25 (f) if, upon investigation, the Director determines that the owner of the orchard development property is not complying with this chapter or the agreement; and

(4) The agreement may also contain such other terms and conditions as set by the Director.

(e) Exemption From Real Property Tax. Orchard development property, during the period of such classification, shall be exempt from real property taxes; provided that this exemption shall take effect for the tax year following the execution of the agreement provided in Section 5A-11.25 (d) and shall in any event terminate at the end of the tax year during which the agreement expires.

The property or properties which are classified as orchard development property in part or in entirety shall be assessed according to Section 5A-8.1. The exemption shall apply to the lands actually in cultivation, provided that the property or properties shall be subject to a minimum real property tax as provided in Section 5A-6.3 (g).

(f) Declassification. Upon declassification by the Director, for reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, of all or any portion of the orchard development property, the Director shall notify the owner of the declassification. In such event, the Director:

(1) Shall cancel the exemption from property taxes on the property which has been declassified retroactive to the date that the property became exempt from real property taxes as provided by Section 5A-11.25 (e) and the property taxes that would have become due and payable (but for the exemption) for all the years that the exemption was in effect on the declassified property shall become immediately due and payable together with a 10 per cent per annum penalty from the respective dates that those tax payments would otherwise have been due; and

(2) Shall thereafter assess the declassified property as provided in Section 5A-8.1.

Willful destruction of all or any portion of the orchard by an owner thereof shall be grounds for declassification but destruction thereof or damage thereto by causes or persons beyond the control of the owner, such as disease, arson, wind storm or the like, shall not be construed as willful action or negligence of the owner. In the event of such unwilled destruction, the Director shall declassify the property according to (2) in this subsection, provided (1) shall not apply.

If, upon declassification of any portion of the orchard development property, the property of the owner in the same vicinity remaining classified as orchard development property shall be less than 50 acres, the entire orchard development property shall be declassified.

(g) Additional Lands. The owner may at any time apply to the Director of Finance to have additional acreage classified as orchard development property, subject to a new agreement; provided that if the land is in the same vicinity and of the same orchard crop as the original orchard

development property, the area of the additional acreage may be less than 50 acres. (Ord. No. 562, January 4, 1990)

Section 5A-11.26 Tree Farm Development Exemption

(a) Definitions. When used herein:

"Director" means the Director of Finance or the Director's duly authorized representative;

"Tree farm development property" means real property suitable for the raising of a merchantable tree farm crop having a normal period of development from the initial time of planting to the first harvest of not less than 6 years nor more than 25 years and which contains a total cultivatable area of not less than 10 acres.

"First Harvest" means the first harvest from which revenue is generated upon the sale of a merchantable tree farm crop.

"Owner" includes a lessee of real property with an unexpired lease term of not less than the period of the agreement provided in Subsection (d) below.

"Merchantable tree farm crop" means a planted and harvested crop from successive plantings which has as its end product wood fiber products, such as chips for paper, biomass, medium density fiberboard, or oriented strand board, laminated veneer lumber, cut lumber, veneer, etc.; provided, however, that merchantable tree farm crop shall not include products which result from thinning of the tree farm crop, such as posts or poles.

(b) Eligibility; Application. The owner of property or properties which are suitable for the raising of a merchantable tree farm crop having a normal period of development from the initial time of planting to the first harvest of not less than six years nor more than 25 years and which contains a total area of not less than 10 acres may apply to the Director for classification of the property as tree farm development property. No tree farm development shall be allowed in the urban district. If the tree farm development abuts the urban district then a buffer of 150 feet shall be required in the tree farm property. This application must include the tree farm management plan for the tree farm, the planting and harvesting schedules, an estimate of value at harvest, and shall specify the tree crop or crops.

The Director shall prescribe the form of the application which shall be filed with the Director by September 1 of any year. The application shall identify the property or properties, shall specify the tree farm crop or crops, shall specify the planting schedule, provided the owner shall have until December 31 of the year of application to complete that year's plantings, according to the tree farm management plan, and shall be accompanied by a map delineating the total tree farm areas.

(c) Classification, Appeal. Upon receipt of the application, the Director shall prepare a finding of fact. If

the Director finds that the property is being utilized as set forth in the application, that the planted crop or crops have a normal period of development from the initial time of planting to the first harvest of not less than 6 nor more than 25 years, and that the area in cultivation is at least 10 acres in aggregate size, the application shall be approved by the Director and the property shall be classified as tree farm development property. The Director may consult with appropriate government agencies and other agriculture experts in making these determinations. The owner may appeal any disapproved application as in the case of an appeal from an assessment.

The owner shall be notified of an approval or disapproval of an application by January 31 preceding the tax year for which the application was filed.

(d) Agreement. As part of the approval of the application, the owner shall agree in writing to the following terms and conditions relative to the establishment and management of the tree farm development property:

(1) The term of the agreement shall be for one year beyond the normal period of development from the initial time of planting to the first harvest as determined by the Director's finding of fact;

(2) the owner shall plant and maintain the tree farm according to good tree farm management practices;

(3) the agreement shall be canceled and terminated and the property shall thereby be declassified and become subject to the conditions specified in Subsection (g) if, upon investigation, the Director determines that the owner of the tree farm development property is not complying with this chapter or the agreement; and

(4) the agreement may also contain such other terms and conditions as set by the Director.

(e) Exemption from Real Property Tax. Subject to Subsection (f) below, tree farm development property, during the period of such classification, shall be exempt from real property taxes; provided that this exemption shall take effect for the tax year following the execution of the agreement provided in Subsection (d) above and shall in any event terminate at the end of the tax year during which the agreement expires or one year after the first harvest, whichever comes first.

The property or properties which are classified as tree farm development property in part or in entirety shall be assessed according to Section 5A-8.1. The exemption shall apply to the lands identified in the tree farm management plan, provided that the property or properties shall be subject to a minimum real property tax as provided in Section 5A-6.3(g). Properties classified as tree farm development property shall not be eligible for classification as tree farm development property again unless:

(1) The tree farm development is completed and followed by a twenty-year agricultural dedication under K.C.C. Section 5A-9.1; or

(2) The tree farm development is declassified under subsection (g) herein and all taxes, penalties and interest due to the County of Kauai as a result of such declassification have been paid to the County of Kauai.

(f) Notwithstanding any provision in this Section 5A-11.26 to the contrary, during the period that property has been classified as tree farm development property, the following rules shall apply if the property has other agricultural uses occurring on it in addition to the tree farming contemplated under the tree farm management plan.

(1) The provisions of this Subsection (f) shall apply to all areas of the tree farm development property, including areas planted and not yet planted with the type of trees contemplated under the tree farm management plan.

(2) All areas of the tree farm development property which have other agricultural uses occurring on it in addition to the tree farming contemplated under the tree farm management plan shall be assessed and taxed according to its value in such other agricultural use.

(g) Declassification. Upon declassification by the Director, for reason of failure on the part of the owner to comply with the terms and conditions contained in the agreement, of all or any portion of the tree farm development property, the Director shall notify the owner of the declassification. In such event, the Director:

(1) Shall cancel the exemption from property taxes on the property which has been declassified retroactive to the date that the property became exempt from real property taxes as provided by Subsection (e) above, and the property taxes that would have become due and payable (but for the exemption) for all the years that the exemption was in effect on the declassified property shall become immediately due and payable together with a 10 percent per annum penalty from the respective dates that those tax payments would otherwise have been due; and

(2) Shall thereafter assess the declassified property as provided in Section 5A-8.1.

Willful destruction of all or any portion of the tree farm by an owner thereof shall be grounds for declassification but destruction thereof or damage thereto by causes or persons beyond the control of the owner, such as disease, arson, wind storm or the like, shall not be construed as willful action or negligence of the owner. In the event of such unwilled destruction, the Director shall declassify the property according to (2) in this subsection, provided the penalties in Subsection (1) above shall not apply.

If upon declassification of any portion of the tree farm development property, the remaining property or properties of

the owner, classified as tree farm development property, shall be less than 10 acres, the entire tree farm development property shall be declassified.

(h) Additional Lands. The owner may at any time apply to the Director of Finance to have additional acreage classified as tree farm development property, subject to a new agreement; provided that if the land is planted in the same tree farm crop or crops as the original tree farm development property and is managed using the same tree farm management plan, the area of the additional acreage may be less than 10 acres.

(i) The provisions of Section 186-5.5, H.R.S. Right to Harvest, shall be applicable to all tree farm development under this Section, except that the management plan does not require the approval of the State of Hawaii Department of Land and Natural Resources. (Ord. No. 562, January 4, 1990; Ord. No. 705, August 6, 1996; Ord. No. 782, December 10, 2001)

Sec. 5A-11.27 Safe Room Exemption.

(a) Definitions. When used in this section 5A-11.27:

"Owner" shall have the meaning ascribed to it in Article 7, Sec. 5A-7.1, Kauai County Code.

"Safe Room" means a windowless room within a residence or within an accessory building to a residence, designed and constructed to resist the effects of wind pressures and to resist the impact from windborne debris which, upon completion of construction, meets the following minimum design specifications:

(1) Location - The safe room shall not be located in a flood zone, storm surge, or other area susceptible to flooding.

(2) Access - The safe room must be readily and easily accessible to persons residing within the residence.

(3) Load Criteria - Design and construction of the safe room shall be for wind loads of not less than 250 miles per hour, in accordance with American Society of Civil Engineers Standard Number 7-98 Minimum Design Loads For Buildings And Other Structures with an Importance Factor (I) of 1.0, a Directional Factor (Kd) of 1.0, a Minimum Site Exposure of C, and as recommended by the Federal Emergency Management Agency (hereafter FEMA) publication 320 "Taking Shelter From The Storm: Building a Safe Room Inside Your House," August 1999 edition, as amended.

(4) Missile Impact Criteria - Design and construction of the safe room shall be for missile impact not less than or equal to a fifteen (15) pound, wooden, two (2) inch-by-four (4) inch beam, striking on one-end, perpendicular to any building component, traveling at not less than 100 miles per hour, in accordance with systems tested, approved, and recommended by FEMA 361 "Design and

Construction Guidance For Community Shelters," July 1999 edition, as amended.

(5) Size Criteria - Shall contain not less than forty (40) square feet of interior floor space or ten (10) square feet of interior space per occupant, whichever is more.

(6) Ventilation - Shall be in accordance with the Building Code of the County of Kauai, Chapter 12, Kauai County Code 1987.

(7) References - The Safe Room shall be designed and constructed pursuant to standards which at a minimum are in compliance with FEMA 320 "Taking Shelter From the Storm: Building a Safe Room Inside Your House," August 1999 edition, as amended, and FEMA 361 "Design and Construction Guidance for Community Shelters," July 1999 edition, as amended.

(b) Application For Eligibility. The owner of real property with a residential building(s), which meets the safe room definition, may apply to the Director pursuant to K.C.C. 1987, sec. 5A-11.1 for a safe room exemption. No exemption shall be granted unless the owner has submitted to the Director an acceptable certification from an architect or structural engineer licensed to practice in the State of Hawaii stating that the completed safe room meets the minimum FEMA and Building Code specifications for a safe room.

(c) Partial Valuation Exemption. Residential buildings or accessory buildings to a residence certified as containing one (1) or more safe rooms shall receive an exemption of $40,000 per residence. (Ord. No. 752, November 6, 2000)

ARTICLE 12. APPEALS

Sec. 5A-12.1 Appeals.

Any owner who may deem himself aggrieved by an assessment made by the director or by the director's refusal to allow any exemption, may appeal from the assessment or from such refusal to the board or the tax appeal court, on or before April 9 preceding the tax year, as provided in this article. Where such an appeal is based upon the ground that the assessed value of the real property for tax purposes is excessive, the valuation claimed by the owner in the appeal shall be admissible in evidence, in any subsequent condemnation action involving the property, as an admission that the fair market value of the real property as of the date of assessment is no more than the value arrived at when the assessed value from which the owner appealed is adjusted to one hundred per cent (100%) fair market value; provided, that such evidence shall not in any way affect the right of the owner to any severance damages to which he may be entitled. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.2 Appeals By Persons Under Contractual Obligations.

Whenever any person is under a contractual obligation to pay a tax assessed against another, the person shall have the same rights of appeal to the board and the tax appeal court and the supreme court, in his own name, as if the tax were assessed against him. The person against whom the tax is assessed shall also have a right to appear and be heard on any such application or appeal. (Ord. No. 394, July 1, 1981)

Sec. 5A-12.3 Grounds Of Appeal, Real Property Taxes.

No owner shall be deemed aggrieved by an assessment, nor shall an assessment be lowered or an exemption allowed, unless there is shown:

(1) Assessment of the property exceeds by more than twenty per cent (20%) the assessment of market value used by the director as the real property tax base, or

(2) Lack of uniformity or inequality, brought about by illegality of the methods used or error in the application of the methods to the property involved, or

(3) Denial of an exemption to which the owner is entitled and for which he has qualified, or

(4) Illegality, on any ground arising under the Constitution or laws of the United States or the laws of the state or the ordinances of the county (in addition to the ground of illegality of the methods used, mentioned in clause (2)). (Ord. No. 394, July 1, 1981; Ord. No. 420, January 1, 1983; Ord. No. 527, December 9, 1987)

Sec. 5A-12.4 Second Appeal.

In every case in which the owner appeals a real property tax assessment to the board or to a tax appeal court and there is pending an appeal of the assessment, the owner shall not be required to file a notice of the second appeal; provided the first appeal has not been decided prior to April 9 preceding the tax year of the second appeal; and provided, further, the director gives notice that the tax assessment has not been changed from the assessment which is the subject of the appeal. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.5 Small Claims.

Any protesting owner who would incur a total tax liability, not including penalties and interest, of less than $1,000 by reason of the protested assessment or payment in question, may elect to employ the Small Claims Procedures of the Tax Appeal Court as set out in Section 232-5, H.R.S. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.6 Appointment, Removal, Compensation.

There is created a board of review which shall consist of five (5) members who shall be citizens of the state and residents of the county, shall have resided at the time of appointment for at least three (3) years in the state, and shall be appointed by the mayor as provided by Charter. A chairman and vice chairman shall be elected annually by members from the membership. The vice chairman shall serve as the chairman of the board during the temporary absence from the county, illness, or disqualification of the chairman. Any vacancy in the board shall be filled for the unexpired term. Each member shall receive and be paid out of the treasury compensation for services for each day of attendance which shall include traveling and other necessary expenses incurred in the performance of official duties. No officer or employee of the county shall be eligible for appointment to any such board. (Ord. No. 394, July 1, 1981)

Sec. 5A-12.7 Board Of Review; Duties, Powers, Procedure Before.

(a) The board of review shall hear informally all disputes between the assessor and any owner in all cases in which appeals have been duly taken and the fact that a notice of appeal has been duly filed by the owner shall be

conclusive evidence of the existence of a dispute.

(b) The board shall hold public meetings at some central location in the county commencing not later than April 9 of each year and shall hear, as speedily as possible, all appeals presented for each year. The board shall have the power and authority to decide all questions of fact and all questions of law, excepting questions involving the Constitution or laws of the United States, necessary to the determination of the objections raised by the owner or the county in the notice of appeal; provided, that the board shall not have power to determine or declare an assessment illegal or void. Without prejudice to the generality of the foregoing, each board shall have power to allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the director and to increase or lower any assessments.

(c) The board shall base its decision on the evidence before it; and, as provided in Sec. 5A-1.17, the assessment made by the assessor shall be deemed prima facie correct. Assessments for the same year upon other similar property situated in the county shall be received in evidence upon the hearing. In increasing or lowering any real property assessment, the board shall be governed by this chapter. The board shall file with the assessor concerned its decision in writing on each appeal decided by it, and a certified copy thereof shall be furnished by the assessor forthwith to the owner concerned by delivery thereof to him, or by mailing the copy addressed to his last known place of residence or business.

(d) Upon completion of its review of the property tax appeals for the current year, the board shall compile and submit to the mayor and shall file with the assessor for the use of the public, a copy of a report covering such features of its work as, in the opinion of the board, will be useful in attaining the objectives set forth in this chapter. In this report the board shall additionally note instances in which, in the opinion of the board, the assessor, in the application of the methods selected by him, erred as to a particular property or particular properties not brought before the board by any appeal, whether the error is deemed to have been by way of underassessment or overassessment. Before commencing this phase of its work, the board shall publish, during the first week of September, a notice specifying a period of at least ten (10) days within which complaints may be filed by any owner. Each complaint shall be in writing, shall identify the particular property involved, shall state the valuation claimed by the owner and the grounds of objection to the assessment, and shall be filed with the assessor who shall transmit the same to the board. Not earlier than one week after the close of the period allowed for filing complaints, the board shall hear the same, after first giving reasonable notice of the

hearing to all interested persons and the assessor. Like notice and hearing shall be given in order for the board to include in its report any other property not brought before it by an appeal. The board may proceed by districts designated by their tax map designation, and may, from time to time, publish the notice above provided for as the work proceeds by districts.

(e) The assessor, in the making of assessments for the succeeding year, shall give due consideration to the report of the board made pursuant to subsection (d).

(f) The board and each member thereof, in addition to all other powers, shall also have the power to subpoena witnesses, administer oaths, examine books and records, and hear and take evidence in relation to any subject pending before the board. It may request the tax appeal court, as prescribed in Section 232-7, H.R.S., to order the attendance of witnesses and the giving of testimony by them, and the production of books, records and papers at the hearings of the board.

(g) The board shall promulgate rules and regulations as provided in Chapter 91, H.R.S., for its hearings. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.8 Tax Appeal Court.

Any owner may appeal any decision of the director or the board to the tax appeal court as provided in Sections 232-8 to 232-14, 232-16 to 232-18, H.R.S., or to the state supreme court as provided in Sections 232-19 to 232-21, H.R.S., except when an appeal is filed with the district court for small claims. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.9 Appeal To Board Of Review.

The notice of appeal must be lodged with the assessor on or before the date fixed by law for the taking of the appeal. An appeal to the board of review shall be deemed to have been taken in time if the notice thereof shall have been deposited in the mail, postage prepaid properly addressed to the assessor, on or before such date.

The notice of appeal must be in writing and any such notice, however informal it may be, identifying the assessment involved in the appeal, stating the valuation claimed by the owner and the grounds of objection to the assessment shall be sufficient. Upon the necessary information being furnished by the owner to the assessor, the assessor shall prepare the notice of appeal upon request of the owner and any notice so prepared by the assessor shall be deemed sufficient as to its form.

The appeal shall be considered and treated for all purposes as a general appeal and shall bring up for determination all questions of fact and all questions of law, excepting questions involving the Constitution or laws

of the United States, necessary for the determination of the objections raised by the owner in the notice of appeal. Any objection involving the Constitution or laws of the United States may be included by the owner in the notice of appeal and in such case the objections may be heard and determined by the tax appeal court on appeal from a decision of the board of review; but this provision shall not be construed to confer upon the board of review the power to hear or determine such objections. Any notice of appeal may be amended at any time prior to the board's decision; provided the amendment does not substantially change the dispute or lower the valuation claimed. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.10 Costs; Deposit For An Appeal.

The cost to be deposited by the owner on appeal to the board shall be $10 (Ten Dollars) for each real property tax appeal.

Any costs for appeals filed before the tax appeal court or the state supreme court shall be as provided in Sections 232-22 and 232-23, H.R.S. (Ord. No. 394, July 1, 1981; Ord. No. 526, December 9, 1987; Ord. No. 527, December 9, 1987; Ord. No. 709, August 30, 1996)

Sec. 5A-12.11 Cost, Taxation.

In the event of an appeal by the owner to the board of review, if the appeal is compromised, or is sustained as to fifty per cent (50%) or more of the valuation in dispute, the costs deposited shall be returned to the appellant. Otherwise the entire amount of costs deposited shall be retained by the county. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.12 Taxes Paid Pending Appeal.

The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the owner, and covered by an appeal to the district court for small claims or the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director into the "litigated claims account". If the final determination is in whole or in part in favor of the appealing owner, the director shall repay to him out of the account, or if investment of the account should result in a deficit therein, out of the general fund of the county, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with a proportionate share of interest earned by the Litigated Claims Account from the date of each payment into the litigated claims account, the interest to be paid from the general fund of the county. The balance, if any, of the payment made by the appealing owner, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization of the general fund.

In a case of an appeal to a board of review, the tax paid upon the amount of the assessment actually in dispute and in excess of that admitted by the owner shall, during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director in a special deposit. In the event of final determination of the appeal in the board of review, the director shall repay to the appealing owner out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable plus a proportionate share of the interest earned while said funds were held in the special deposit. The balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, shall become a realization of the general fund. (Ord. No. 394, July 1, 1981; Ord. No. 525, December 9, 1987; Ord. No. 527, December 9, 1987)

Sec. 5A-12.13 Amendment Of Assessment List To Conform To Decision.

The director shall alter or amend the assessment and the assessment list in conformity with the decision of judgment of the last board or court to which an appeal may have been taken. (Ord. No. 394, July 1, 1981; Ord. No. 527, December 9, 1987)

Sec. 5A-12.14 Appeals of Timeshare Assessments.

All rights and privileges afforded property owners under Article 12 of chapter 5A with respect to contesting or appealing assessments shall apply both to the time share plan manager and to any person owning a time share interest. Assessments which may be appealed from include, but are not limited to, assessments derived from resales of time share interests. (Ord. No. 713, November 22, 1996)

CHAPTER 6

GENERAL PROVISIONS RELATING TO FINANCE

(The purpose of this Chapter is to accommodate those non-tax ordinances that deal with the subject of county fiscal administration.)

ARTICLE 1. TREASURY TRUST FUND

Sec. 6-1.1 Title And Purpose.

There shall be created and established a special trust fund to be known as the "Treasury Trust Fund". All moneys received by the various agencies of the County for specific purposes, as trustee, escrow agent, custodian or security holder and which moneys are found by the Treasurer, in view of the nature of the purposes for which they have been received, to require expeditious disbursement, shall be deposited into the Treasury Trust Fund from which the Treasurer may authorize disbursements through checking accounts. The moneys shall be maintained by separate accounts according to, and used for, the purposes for which the moneys are received. (Ord. No. 122, February 17, 1965; Sec. 29, C. O. 1971; Sec. 6-1.1, R.C.O. 1976)

Sec. 6-1.2 Administration.

The administrative head of each County agency shall be responsible for the administration of the respective agency account or accounts in the Treasury Trust Fund under procedures as may be prescribed by the Treasurer. (Ord. No. 122, February 17, 1965; Sec. 29, C. O. 1971; Sec. 6-1.2, R.C.O. 1976)

Sec. 6-1.3 Disposition Of Unclaimed Moneys.

All moneys deposited into the Treasury Trust Fund, not used for the purposes for which the moneys were received, and remaining unclaimed for a period of at least five (5) years after the purposes for which the moneys were originally received have ceased to exist, shall be transferred into the General Fund of the County as general realization. (Ord. No. 122, February 17, 1965; Sec. 29, C. O. 1971; Sec. 6-1.3, R.C.O. 1976)

Sec. 6-1.4 Expeditious Disbursement Of Trust Accounts.

Any balance in any checking account in the nature of a trust presently maintained in any bank for the use of the various agencies of the County and which moneys are found by the Treasurer, in view of the nature of the purposes for which they have been received, to require expeditious disbursement, shall be transferred by the Treasurer to the Treasury Trust Fund. (Ord. No. 122, February 17, 1965; Sec. 29, C. O. 1971; Sec. 6-1.4, R.C.O. 1976)

ARTICLE 2. REVENUE SHARING TRUST FUND

Sec. 6-2.1 Title And Purpose.

There shall be established in the books of the Finance Department a trust fund to be designated as the "Revenue Sharing Trust Fund" to which shall be deposited promptly upon receipt all payments received under the State and Local Assistance Act of 1972, P. L. 92-512, including any interest earned thereon. (Ord. No. 169, March 22, 1973; Sec. 6-2.1, R.C.O. 1976)

Sec. 6-2.2 Regulation Of Expenditures.

Expenditures from the trust fund shall be used only for priority expenditures for public safety, environmental protection, public transportation and as further defined in Section 103(a) of the State and Local Fiscal Assistance Act of 1972 and any amendments thereto. The expenditures from the trust fund shall follow County appropriation, ordinances and procedures and all fiscal, accounting and audit procedures shall comply with the guidelines set by the Secretary of Treasury. No expenditures shall be made from the fund for matching Federal funds or any other purpose prohibited in the Federal Act. (Ord. No. 169, March 22, 1973; Sec. 6-2.2, R.C.O. 1976)

Sec. 6-2.3 Administration.

(a) The Finance Director shall prepare and submit all required reports to the Secretary of Treasury or any other Federal agency or official pertinent to the use, planned use and accounting of the trust fund all in the form required by the Secretary. The Finance Director shall also publish each report required to be published in a newspaper of general circulation published within the State, and shall advise the news media of the publication. The Finance Director shall provide and make accessible to the Secretary books, documents, papers or records required by the Secretary or the Comptroller General.

(b) Funds in the trust fund shall be used within a reasonable period, according to the regulations prescribed by the Treasury Department.

(c) Expenditure of the funds in the trust fund shall comply with the prevailing wage provisions of the Davis-Bacon Act on any construction project when twenty-five per cent (25%) or more of the costs of the project are paid out of revenue sharing funds.

(d) Wages of individuals employed in jobs financed in whole or in part out of revenue sharing funds shall not be lower than the prevailing rates of pay for persons employed by the County in similar public occupations.

(e) No person in the United States shall be excluded from participation in, denied the benefits of, or subject to discrimination, under any program or activity funded in whole or in part with revenue sharing funds, on the ground of race, color, national origin or sex.

(f) The Finance Director shall comply with and oversee the compliance by all the other departments of all of the provisions of the Davis-Bacon Act and all the regulations established by the Secretary of Treasury pertinent to the provisions of the Federal Act. (Ord. No. 169, March 22, 1973; Sec. 6-2.3, R.C.O. 1976)

ARTICLE 3. STANDARDS FOR THE APPROPRIATIONS OF FUNDS TO PRIVATE ORGANIZATIONS

Sec. 6-3.1 Purpose.

The purpose of this ordinance is to establish standards for the appropriation of funds to private organizations providing programs and services which the County of Kauai has determined to be in the public interest. (Ord. No. 381, April 7, 1980)

Sec. 6-3.2 Appropriation Of Funds.

All grants made by the County of Kauai to private organizations are to be made in accordance with the standards that the private programs so funded yield benefits to the public and accomplish public purposes. No grant, subsidy or purchase of services contract to a private organization shall be made or allotted unless the private organization submits an application indicating that the organization complies with the following criteria:

(a) The private organization is a not-for-profit organization, corporation or unincorporated association, chartered or otherwise engaging in charitable activities in the County of Kauai.

(b) The purpose for which the private not-for-profit corporation or association is organized provides benefits to the people of the County of Kauai.

(c) The purposes for which the not-for-profit corporation or association is organized and for which the group is requested provides services or activities to meet a distinctive cultural, social or economic need and for which

adequate federal or state funding cannot be secured.

Notwithstanding the above, grants made by the County of Kauai under the U. S. Department of Housing and Urban Development Community Block Grant (CDBG) and HOME Investment Partnership (HOME) programs shall be made or allotted to a private organization that is either a for profit organization incorporated under the laws of the State of Hawaii or a not-for-profit organization that complies with the requirements set forth above. (Ord. No. 381, April 7, 1980; Ord. No. 677, February 13, 1995)

Sec. 6-3.3 Organizations Applying/Granted Funds.

No grant, subsidy or purchase of services contracted to a private organization shall be made or allotted by the County of Kauai unless a private organization so funded agrees to the following conditions:

(a) To comply with all applicable federal and state laws prohibiting discrimination against any person, on the grounds of race, color, national origin, religion, creed, sex, or age, in employment and any condition of employment with the recipient or in participation in the benefits of any program or activity funded in whole or in part by government funds;

(b) To comply with all applicable licensing requirements of the County, State and Federal governments, and with all applicable accreditation and other standards of quality generally accepted in the field of the recipient's activities;

(c) To have in its employ or within its membership such persons as are qualified to engage in the activity funded in whole or in part by government funds;

(d) To comply with such other requirements as the Director of Finance may prescribe to ensure adherence by the provider or recipient with county, federal and state laws and to ensure quality in the service or activity rendered by the recipient; and

(e) To allow the expending county agency, the Finance Committee of the Council, full access to records, reports, files and other related documents in order that they may monitor and evaluate the management and fiscal practices of the expenditure of County funds. (Ord. No. 381, April 7, 1980)

Sec. 6-3.4 Reports.

All organizations granted funds must keep these funds financially separate in their book of accounts and submit quarterly program and financial reports on the use of these funds, due on or before the 15th of the month following the close of the quarter; and a year-end report on the same within ninety (90) days following the close of the fiscal year in which the money is appropriated. The reports shall contain but not be limited to:

(1) Program status summary;
(2) Program data summary;
(3) Summary of participant characteristics;

(4) Financial status report of the County funds used; and

(5) A narrative report.

(Ord. No. 381, April 7, 1980)

ARTICLE 4. BEAUTIFICATION TRUST FUND

Sec. 6-4.1 Purpose.

The purpose of this Article is to establish a fund in which all monetary contributions received by the County of Kauai for the financing of projects planned by the Mayor's Committee on Beautification can be deposited and utilized. (Ord. No. 465, September 12, 1984)

Sec. 6-4.2 Administration.

(a) The Director of Finance shall be responsible for the administration of the beautification trust fund and shall provide a status report on all expenditures and contributions of said fund to the Council on a semi-annual basis.

(b) All private contributions received by the County of Kauai for the purpose of financing projects planned by the Mayor's Committee on Beautification shall be deposited directly into this fund.

(c) Any interest revenues on the investment of cash proceeds contained in this fund shall be deposited in the General Fund of the County of Kauai and expended for General Fund purposes. (Ord. No. 465, September 12, 1984)

Sec. 6-4.3 Regulation Of Expenditures.

Expenditures from this fund shall be used only for beautification projects recommended by the Mayor's Committee on Beautification and which have received the approval of the Mayor. (Ord. No. 465, September 12, 1984)

ARTICLE 5. PAYMENT TO COUNTY BY CHECK OR NEGOTIABLE INSTRUMENT, SUBSEQUENTLY DISHONORED

Sec. 6-5.1 Service Charge Assessed.

In all instances where money due the County of Kauai is paid by check or other negotiable instrument and the check or other negotiable instrument is dishonored when presented for payment, the County shall assess and collect a service charge in the amount of $7.50 against the maker of the check or negotiable instrument. Payment of this $7.50 service charge shall be made in U. S. currency or other form acceptable to the Director of Finance. All fees collected pursuant to this section shall be placed in the custody of the Director of Finance for deposit in the general fund. (Ord. No. 473, March 27, 1985)

ARTICLE 6. HOUSING AND COMMUNITY DEVELOPMENT REVOLVING FUND

Sec. 6-6.1 Title And Purpose.

There shall be established within the Finance Department a revolving fund to be known as the "Housing and Community Development Revolving Fund." The purpose of this revolving fund is to collect any proceeds or income generated from all projects funded with monies from the Housing and Community Development Revolving Fund, U. S. Department of Housing and Urban Development (HUD), Community Development Block Grant (CDBG), Small Cities Program and HOME Investment Partnerships Program (HOME); the Rural Economic and Community Development Services of the U.S. Department of Agriculture (USDA) (formerly known as the Farmers Home Administration); and any other Federal, State or County Agency and to revolve such funds. The monies shall be maintained by separate accounts according to the source of the funds or applicable program restrictions for the use of the funds. (Ord. No. 481, October 24, 1985; Ord. No. 539, March 17, 1988; Ord. No. 560, November 27, 1989; Ord. No. 676, February 13, 1995)

Sec. 6-6.2 Regulation Of Expenditures.

All moneys received by the revolving fund shall be utilized for the development, operation, maintenance, buy-back, rehabilitation of Housing and Community Development projects, funding of community projects and administrative expenses of Kauai County Housing Agency and such expenditure of monies shall be made in compliance with all Federal, State, and County program requirements. Any interest earned by the revolving fund shall be paid into and credited to the revolving fund. (Ord. No. 481, October 24, 1985; Ord. No. 539, March 17, 1988; Ord. No. 560, November 27, 1989; Ord. No. 676, February 13, 1995)

ARTICLE 7. KAUAI POLICE DEPARTMENT CRIMINAL ASSETS FORFEITURE FUND AND NON-CASH PROPERTY

Sec. 6-7.1 Title And Purpose.

There shall be established within the Finance Department a fund to be known as the "Kauai Police Department Criminal Assets Forfeiture Fund". All moneys received by the Kauai Police Department under the Comprehensive Crime Control Act of 1984 (P.L. 98-473), shall be deposited in the Kauai Police Department Criminal Assets Forfeiture Fund. Any interest earned by the Fund shall be paid into and credited to the Fund. (Ord. No. 482, November 6, 1985)

Sec. 6-7.2 Regulation Of Expenditures.

All moneys received shall be used solely for the Kauai Police Department for law enforcement purposes as delineated in the Comprehensive Crime Control Act of 1984 (P.L. 98-473) and "The Attorney General's Guidelines on Seized and Forfeited

Property" dated May 24, 1985, and as thereafter may be amended.

All moneys shall be appropriated by budget ordinance or amendment to the budget ordinance, following procedures established in the Charter. (Ord. No. 482, November 6, 1985)

Sec. 6-7.3 Non-Cash Property.

Any request for forfeited non-cash or tangible property shall first be submitted to the County Council for approval. If time constraints do not permit prior County Council approval, the request may nonetheless be submitted, provided that County Council approval is obtained prior to acceptance of such property.

All non-cash or tangible property received shall be used solely by the Kauai Police Department for law enforcement purposes as delineated in the Comprehensive Crime Control Act of 1984 (P.L. 98-473) and "The Attorney General's Guidelines on Seized and Forfeited Property" dated May 24, 1985, and as thereafter may be amended. (Ord. No. 482, November 6, 1985)

ARTICLE 8. TRUST FUND FOR CONTRIBUTIONS BY DEVELOPERS

Sec. 6-8.1 Purpose.

The Council anticipates the recurring need to assess developers the cost of infrastructures imposed on the County by developments. The purpose of this Article is to establish a trust fund and to provide a policy regarding the use of said trust fund. (Ord. No. 371, August 27, 1979; Ord. No. 427, June 1, 1982)

Sec. 6-8.2 Trust Fund Account; Capital Improvements.

The annual CIP budget ordinance shall contain a trust fund account to include all contributions made by developers and others for the purpose of relieving impacts created by developments. The Council shall, in making the appropriations in the budget, identify the projects and cost estimates for the project similar to other Capital Improvements Projects. Capital improvement may include plans, land acquisition, structures, roads, sewers, equipment and other public facilities. (Ord. No. 371, August 27, 1979; Ord. No. 427, June 1, 1982)

Sec. 6-8.3 Appropriations.

Appropriations for expenditures from said trust fund shall be pursuant to ordinance and limited to capital improvements and shall exclude operating expenditures. In the event the ordinance originating the contribution limits the use or area of use of such contribution, all expenditures from such contribution shall be limited to the restricted uses and area. In the event there is no restriction as to use or area, the Council may expend such contributions in any area. (Ord. No. 371, August 27, 1979; Ord. No. 427, June 1, 1982)

Sec. 6-8.4 Interest.

All interest revenue on the investment of the cash proceeds contained in this fund shall be deposited in the General Fund of the County of Kauai and expended for General Fund purposes. (Ord. No. 371, August 27, 1979; Ord. No. 427, June 1, 1982)

ARTICLE 9. HOUSING REVOLVING FUND

Sec. 6-9.1 Purpose.

The purpose of this fund is to provide a stable and continuing source of monies to be utilized for planning, administering and constructing government housing projects and to provide a policy for the use of said revolving funds. (Ord. No. 428, June 1, 1982)

Sec. 6-9.2 Housing Revolving Fund.

The annual CIP budget ordinance shall contain a housing revolving fund. The Council shall, in making the

appropriations in the budget, identify the housing projects and cost estimates for the projects similar to other capital improvement projects. (Ord. No. 428, June 1, 1982)

Sec. 6-9.3 Appropriations.

Appropriations for expenditures from said revolving fund shall be pursuant to ordinance and limited to government housing projects which shall include plans, land acquisition, construction -- including onsite and offsite improvements and interim construction financing -- administrative project costs and buy-backs and other related government housing expenditures as authorized by the Council. (Ord. No. 428, June 1, 1982)

Sec. 6-9.4 Reimbursement; Interest.

Monies expended from this fund, as authorized by the Council, shall be reimbursed to the Revolving Fund as the housing units or lots are sold, except that all interest revenue on the investment of the cash proceeds contained in this fund shall be deposited in the General Fund of the County of Kauai and expended for General Fund purposes. (Ord. No. 428, June 1, 1982)

ARTICLE 10. MAXIMUM INTEREST RATE OF BONDS

Sec. 6-10.1 Maximum Interest Rate.

All County of Kauai bonds issued under the provisions of Chapter 47, Hawaii Revised Statutes, shall bear interest payable semi-annually at a coupon or stated rate or rates not exceeding nine-and-one-half per cent (9-1/2%) a year. (Ord. No. 391, July 29, 1980)

ARTICLE 11. AMOUNTS LESS THAN ONE DOLLAR $1.00

Sec. 6-11.1 Refunds.

Unless specifically requested by a party who has made an overpayment, there shall be no vouchering and delivering of any refund less than $1.00. (Ord. No. 555, August 14, 1989)

Sec. 6-11.2 Collections.

No billing or other special effort may be made to collect undercharges or underpayments of less than $1.00. (Ord. No. 555, August 14, 1989)

ARTICLE 12. PAYMENTS AND OBLIGATIONS

Sec. 6-12.1 Purpose.

The purpose of this Article is to establish procedures and policies pursuant to Section 19.13(A) and Section 2.02, Charter, for payments and obligations made by the County. (Ord. No. 641, November 12, 1993)

Sec. 6-12.2 Procedures And Policies.

a) With the exception of debt service charges, no payment shall be authorized or made, and no obligation incurred against the County, except in accordance with appropriations duly made and under such procedures and policies as may be established by this ordinance.

b) All applications by any department or agency of the County for moneys from the Federal or State government, or any outside source, shall be submitted to the Council for approval. No payment shall be authorized or made, and no obligation incurred against the County, utilizing moneys from the Federal or State government, or any outside source, or in anticipation of receipt of such moneys, unless written approval is obtained from the Council and an account is first established. As used herein, moneys includes all grants and includes federal, state, or private financial assistance for emergency disaster relief.

c) If any provision of this ordinance jeopardizes the receipt by the County of any federal grant-in-aid or other federal allotment of money, such provision may, insofar as such receipt is jeopardized, be waived by the Council upon the recommendation of the mayor. (Ord. No. 641, November 12, 1993)

ARTICLE 13. RECOVERY OF RESCUE EXPENSES

Sec. 6-13.1 Definitions. As used in this article, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

"County" means the County of Kauai.

"Gross negligence" means conduct which is either intentional or committed under circumstances exhibiting a reckless disregard for the safety of oneself or of others.

"Person" means any individual, corporation, association, partnership, firm, trustee, or legal representative.

"Recoverable expenses" means those expenses that are reasonable, necessary and allocable to the rescue operation. Recoverable expenses shall not include normal expenditures that are incurred in the course of providing what are traditionally local services and responsibilities, such as routine fire fighting. Expenses allowable for recovery may include, but are not limited to:

(1) Materials and supplies acquired, consumed and expended specifically for the purpose of the rescue operation.

(2) Compensation of employees for the time and efforts devoted specifically for the purpose of the rescue operation.

(3) Rental or leasing of equipment used specifically for the rescue operation such as protective equipment or clothing, scientific and technical equipment, helicopters, boats or bulldozers.

(4) Repair costs for equipment owned by the County that is damaged during the rescue operation.

(5) Replacement costs for equipment owned by the County that is damaged beyond use or repair, if the equipment was a total loss and the loss occurred during the rescue operation.

(6) Special technical services specifically required for the rescue operation such as costs associated with the time and efforts of technical experts or specialists not otherwise provided by the County.

(7) Other special services specifically required for the rescue operation.

(8) Medical expenses incurred as a result of the rescue operation.

(9) Legal expenses that may be incurred as a result of the rescue operation, including efforts to recover expenses pursuant to this article.

"Rescue operation" means the effort to free or remove an individual or individuals placed in a situation of distress or peril from any confinement, violence or danger. (Ord. No. 695, July 18, 1995)

Sec. 6-13.2 Gross Negligence. Any and all persons who, because of gross negligence, cause or contribute to the placement of an individual or individuals in a situation of distress or peril which results in a rescue operation shall be liable to the County for all recoverable expenses resulting from the rescue operation. This shall be in addition to any and all penalties provided by law. (Ord. No. 695, July 18, 1995)

Sec. 6-13.3 Recovery of Expenses.

(a) County personnel and departments involved in a rescue operation shall keep an itemized record of recoverable expenses resulting from the rescue operation. Promptly after completion of the rescue operation, the appropriate department shall certify those expenses to the Office of the County Attorney.

(b) Submission of claim. The Office of the County Attorney, on behalf of the County, shall submit a written itemized claim for the total recoverable expenses incurred by the County for the rescue operation to the responsible person or persons and a written notice that unless the amounts are

paid in full within thirty (30) days after receipt of the claim and notice, the County will file a civil action seeking recovery for the stated amount.

(c) Civil Suit. The County may bring a civil action for the recovery of all recoverable expenses against any and all persons causing or responsible for the placement of the individual or individuals in a situation of distress or peril which results in a rescue operation.

(d) Any expenses recovered as a result of this Article shall be credited back to the appropriate department's budget for which rescue expenses were incurred. If the recovery is less than the amount claimed, and more than one department incurred expenses, credit to each department involved shall be prorated in proportion to that department's expense.

(e) Any unexpended balance remaining in the various department's budget(s) as a result of this Article shall lapse at the end of the fiscal year. (Ord. No. 695, July 18, 1995; Ord. No. 712, October 28, 1996)

ARTICLE 14. PUBLIC ACCESS, OPEN SPACE AND NATURAL RESOURCES PRESERVATION FUND

Sec. 6-14.1 Purpose.

(a) In adopting each fiscal year's budget and capital program, the Council shall appropriate a minimum of one-half of one percent (0.5%) of the certified real property tax revenues to a fund known as the Public Access, Open Space, and Natural Resources Preservation Fund ("Fund"). The moneys in this Fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the County of Kaua'i for the following purposes:

(1) Public outdoor recreation and education, including access to beaches and mountains;

(2) Preservation of historic or culturally important land areas and sites;

(3) Protection of significant habitats or ecosystems, including buffer zones;

(4) Preserving forests, beaches, coastal areas and agricultural lands;

(5) Protecting watershed lands to preserve water quality and water supply;

(6) Conserving land in order to reduce erosion, floods, landslides, and runoff;

(7) Improving disabled and public access to, and enjoyment of, public land and open space;

(8) Acquiring disabled and public access to public land, and open space.

(b) The moneys in this Fund may also be used for the payment of interest, principal, and premium, if any, due with respect to bonds issued pursuant to Sections 3.13, 3.14, or 3.15, Charter, in whole or in part - for the purposes enumerated in paragraph (a) of this section and for the

payment of costs associated with the purchase, redemption or refunding of such bonds.

(c) Any balance remaining in this Fund at the end of any fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The moneys in this Fund shall not be used for any purpose except those listed in this section. (Ord. No. 812, December 15, 2003)

Sec. 6-14.2 Administration.

(a) A community-based process that incorporates countywide community input for the purposes of establishing annual recommended priorities of lands or other property entitlements to be acquired for those land conservation purposes described in Section 6-14.1(a) of this article and paragraph C of Section 19.15 of the Charter shall be utilized by the County.

To meet this intent, a fund advisory commission ("Commission") shall be established consisting of nine (9) appointees.

(1) The Mayor shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

(A) Waimea - Kekaha;

(B) Līhuʻe - Hanamāʻulu; and

(C) Kapaʻa - Wailua.

(2) The Council shall select four (4) appointees, with at least one (1) from each of the following development plan areas and one (1) at-large:

(A) Hanapēpē - ʻEleʻele,

(B) Kōloa - Poʻipū - Kalāheo; and

(C) North Shore (Anahola to Hāʻena)

(3) One (1) island wide, at-large appointee shall be selected by the appointed eight (8). If there is no agreement on the selection of the one (1) additional member within forty-five (45) days of the appointment of the eight member, the one (1) additional member shall be appointed by the Mayor and confirmed by the Council.

(4) Initial terms of appointment shall be as follows:

(A) All at-large appointees shall serve initial terms of one (1) year.

(B) Two (2) Mayoral district appointees shall serve three-year terms.

(C) One (1) Mayoral district appointee shall serve an initial one-year term.

(D) Two Council district appointees shall serve initial terms of two (2) years.

(E) One Council district appointee shall serve a three-year term.

Pursuant to Charter Section 23.02(B), all subsequent appointments shall serve for staggered terms of three (3) years and until their successors are appointed. However, no holdover term shall extend beyond ninety (90) days.

(5) The role of the Commission shall be to:

(A) Work with the Planning Department to develop an annual list of priority projects to be considered for funding; and

(B) Solicit public input on development of the annual list of priority projects to be considered for funding.

(b) The Commission shall establish annual recommended priorities of lands or property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article.

(c) For administrative purposes, this Commission shall be attached to the Planning Department.

(d) At any given time, no more than five percent (5%) of this fund shall be used for administrative expenses.

(e) Meetings of this Commission shall comply with requirements of Chapter 92, Hawai'i Revised Statutes (the "Sunshine Law").

(f) The Commission shall adopt administrative rules of procedure pursuant to Chapter 91, Hawai'i Revised Statutes (the "Hawai'i Administrative Procedures Act") within one hundred and eighty (180) days of the full appointment of the Commission's membership. (Ord. No. 812, December 15, 2003)

Sec. 6-14.3 Appropriation of Funds.

(a) Appropriations for expenditure from this fund shall be made by ordinance.

(b) The Commission shall transmit annual recommendations to the Council for priorities of lands or other property entitlements to be acquired, or for the funding of projects directly related to the purposes of this article. (Ord. No. 812, December 15, 2003)